Supreme Court, U.S.
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No.

In The Supreme Court of the United States

BVR LIQUIDATING, INCORPORATED, formerly known as Beaver Precision Products, Inc.; UNITRON, INC.,

Petitioners.

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND ITS LOCAL UNION NO. 540; RICHARD POLLARD; RONALD MANKE; THOMAS ELDON; ALLEN LAWRENCE,

Respondents,

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI with Appendix

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January 28, 2000

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QUESTION PRESENTED

Whether the *Yard-Man* inference/ presumption -- that retiree health care benefits vest for the lifetime of the retiree even when the terms of the benefits contract lack any clear, affirmative vesting language -- is contrary both to traditional principles of contract interpretation and to Congress' intent in specifically choosing not to provide for the vesting of employee welfare benefits under the Employee Retirement Income Security Act, 29 U.S.C. Sec. 1001, *et seq.*

PARTIES TO THE PROCEEDING

The parties to the proceeding before the Sixth Circuit Court of Appeals are the following:

BVR Liquidating, Inc., f/k/a "Beaver Precision Products, Inc." an Illinois corporation with no parent and no non-wholly owned subsidiaries;

and

Unitron, Inc., a Texas corporation, with no non-wholly owned subsidiaries and with a parent, Unitron Company, Inc.

No publicly held company owns ten percent (10%) or more of either corporation's stock.

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PETITION FOR WRIT OF CERTIORARI

Petitioners BVR Liquidating, Inc. ("BVR") and Unitron, Inc. ("Unitron") respectfully pray that a Writ of Certiorari issue to review a final judgment and order of the United States Court of Appeals for the Sixth Circuit.

JURISDICTION

The decision of the Court of Appeals for the Sixth Circuit was filed on September 14, 1999 and reported as *International Union, United Automobile, Aerospace and Agricultural Workers v. BVR Liquidating, et al.*, 190 F.3d 768 (6th Cir. 1999), *cert. denied*, 465 U.S. 1007, 104 S.Ct. 1002, 79 L.Ed.2d 234 (1984). Rehearing and Suggestion for Rehearing En Banc was denied on November 2, 1999.

This Court has jurisdiction under 28 U.S.C. Sec. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The pertinent federal statutes are reproduced at Appendices G through I.

STATEMENT OF THE CASE

The facts of this case are undisputed and straightforward. Unitron purchased the "Beaver Precision Products" business in 1991 and operated it until May 31, 1994, when it sold the business to BVR. (App. A, page 4, n. 4). In April, 1997, BVR (then known as "Beaver Precision

Products, Inc.") sold essentially all of its assets to an unrelated third party, permanently closing its only remaining plant, terminating its employees, and going out of business. (App. A, page 4, n. 4).

At this time of the plant closing BVR announced that it would no longer provide health care benefits to former employees who had retired after June 30, 1988.[1] (App. A, page 6).

I. THE DISTRICT COURT PROCEEDINGS

On May 9, 1997, the Union filed its suit against BVR, Unitron, their owners, and various related entities under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. §185, to recover a variety of benefits, including lifetime retiree health care benefits arising out of three consecutive three-year collectively bargained insurance agreements, running from 1988 through June 7, 1997, when the last one expired.

Shortly thereafter, several retirees commenced a class action under §502 of the Employment Retirement Income Security Act of 1974, 29 U.S.C. §§1001, *et seq.* ("ERISA") for most of the same benefits. Both cases were subsequently consolidated.

There is no dispute about the actual language of the relevant insurance agreements. Section 1A of each of them states that "[t]hese benefits will be provided...for the term of this

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[1] Not clear from the Sixth Circuit opinion's statement of "Facts" is that retiree health care benefits were continued for two months *after* the plant closed, until the last Insurance Agreement expired on June 7, 1997.

Agreement except where the Plan specifically provides otherwise." (App. A, page 12). Section 9B, applying only to employees who retired between June 1, 1985 and July 1, 1988, states that health care benefits "continued after retirement until their date of death." (App A, page 5, n. 5) Section 9C, applying to post-July 1, 1988 retirees, states that their benefits merely "continued" without any specific duration. (App. A, page 5, n. 5).[2]

It is also undisputed that the benefits for post-July 1988 retirees were substantially better than for earlier retirees, primarily because spouses and dependents became covered; vision and hearing coverage was added; and paid-up life insurance was increased from $2,500 to $3,500. (App. A, page 13)

On December 4, 1998, the district court entered summary judgment against BVR and Unitron, finding that (1) the express language of Section 9C of the insurance agreements unambiguously established vested lifetime retiree health care benefits; but that, even if it had not,

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[2] The Sixth Circuit mis-states the language of Sections 9A and 9B of the 1988-91 Insurance Agreement. Section 9A did not include "Through June 30, 1988" in its caption, or "and prior to July 1, 1988" in its text. Conversely, Section 9B's caption included the words "Through June 30, 1988," and the first sentence of its text included the words "and prior to July 1, 1988" following its reference to June 1, 1985. *See* Joint Appendix, page 481. The correct language, however, was considered by the district court in its September 29, 1997 order granting partial summary judgment (Joint Appendix, page 683) that formed the basis for the district court's final judgment.

(2) the extrinsic evidence supported the finding that those benefits were vested. (App. A, page 7). Accordingly, that court entered a permanent mandatory injunction requiring BVR and Unitron to reinstate and maintain retiree health care benefits under the relevant insurance agreements for the lives of the retirees, their spouses and eligible dependents.[3]

II. THE SIXTH CIRCUIT PROCEEDINGS

The Sixth Circuit, in a decision written, ironically, by the author of *International Union v. Yard-Man*, 716 F.2d 1476 (6th Cir. 1983), affirmed the district court's judgment.

In so doing, it first applied the *"Yard-Man* presumption" of vested benefits to find that Section 9C unambiguously demonstrated the parties' intent that the health care benefits for post-July 1988 retirees vested for their lifetimes. (App. A, pages 11-12). It then found the duration of those benefits to be ambiguous when read in light of Section 1A's general duration of benefits limitation. (App. A, page 12). In view of that *Yard-Man* presumption-created ambiguity, the court looked to the extrinsic evidence -- primarily affidavits from three members of the Union's bargaining team -- that Section 9C's enhanced benefits for post-July 1988 retirees were not a

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[3] Unitron was required to pay health care benefits for those retirees (as well as their spouses and eligible dependents) who retired during Unitron's ownership of Beaver Precision Products, while BVR was required to pay benefits for all subsequent retirees, spouses and eligible dependents.

tradeoff for those benefits not vesting and being limited to the duration of the agreement. (App. A, page 13).

The Sixth Circuit also denied rehearing and rehearing *en banc*.

SUMMARY OF ARGUMENT

As Judge Easterbrook of the Seventh Circuit wrote in his dissent in *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 620 (7th Cir.) *cert denied*, 510 U.S. 909, 114 S.Ct. 291, 126 L.Ed.2d 240 (1993), when it comes to vesting of retiree welfare benefits under ERISA: "Uncertainty now reigns."

Unfortunately, nothing has changed since 1993, which is why this Court should finally end that uncertainty by establishing a uniform standard for interpreting health and welfare benefit provisions.

Such a standard is needed to resolve the current split among eight Circuits and to prevent those courts that recognize the *Yard-Man* inference/presumption from continuing to misuse it -- as it has been misused by the Sixth Circuit in this case -- to create ambiguity that can then be resolved with partisan extrinsic evidence, thereby defeating the very purpose of written contracts and "the venerable 'four corners' rule."[4]

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[4] *Matthews v. Sears Pension Plan*, 144 F.3d 461, 466 (7th Cir.) *cert. denied*, 119 S.Ct. 618, 142 L.Ed.2d 557 (1998). Chief Judge Posner went on to state, "[t]he security that one seeks from having a written statement of one's legal rights and duties would be destroyed" if parties to the contract were free to create ambiguity through extrinsic evidence, especially where

The contract language in question here -- one provision which unambiguously limits the duration of *all* retiree benefits to the term of the agreement in the absence of specific durational language to the contrary, the other provision which continues certain benefits for one group of retirees for no set duration -- presents the cleanest of slates on which definitive guidelines for interpreting benefit contracts can be written by this Court.

The absence of such guidelines has fostered a crazy-quilt of inconsistent court decisions that have plagued this area of law for over fifteen years -- during which time the *Yard-Man* inference has metamorphosed into a presumption -- while splitting the United States Courts of Appeals into two factions: on one side, the Sixth Circuit, joined by the First, Fourth and the Eleventh Circuits;[5] and on the other, the Third Circuit, joined by the Fifth, Seventh and Eighth Circuits.[6]

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that evidence was not objective but depended on the credibility of testimony of an interested party. Id. at 466-467.

[5] *See, e.g., United Steelworkers of America, AFL-CIO v. Textron, Inc.*, 836 F.2d 6, 9 (1st Cir. 1987); *Keffer v. H.K. Porter Co.*, 872 F.2d 60, 64 (4th Cir. 1989); and *United Steelworkers of America v. Connors Steel Co.*, 855 F.2d 1499, 1505 (11th Cir. 1988), *cert. denied*, 489 U.S. 1096, 109 S.Ct. 1568, 103 L.Ed.2d 935 (1989).

[6] *See, e.g., International Union, UAW v. Skinner Engine Co.*, 188 F.3d 130, 140 (3d Cir. 1999); *International Association of Machinists v. Masonite Corp.*, 122 F.3d 228, 232 (5th Cir. 1997); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 608 (7th Cir. 1993); and *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512, 1517 (8th Cir. 1988) *cert. denied* 489 U.S. 1051, 109 S.Ct. 1310, 103 L.Ed. 2d 579 (1989).

The stakes in this case are substantial for BVR and Unitron: the health insurance premiums alone for the persons covered under the permanent injunction already exceed $250,000 per year, and can be expected to increase as the cost of such insurance for those people increases from age and inflation throughout the remainder of their lifetimes.

The stakes for the petitioners, however, pale in comparison to the amounts that have been paid, and that will continue to be paid, by those many employers and former employers -- including those like BVR that have closed plants and gone out of business -- on whom obligations for lifetime retiree health care and other benefits have been unjustly imposed simply because they had the misfortune of doing business in jurisdictions that follow *Yard-Man*.

ARGUMENT

There are at least three grounds for reversing the decision of the Sixth Circuit Court of Appeals.

I. THE SIXTH CIRCUIT'S DECISION IGNORES ESTABLISHED PRINCIPLES OF CONTRACT INTERPRETATION BY USING THE "*YARD-MAN* INFERENCE" TO CREATE AMBIGUITY

The Sixth Circuit's reliance on *Yard-Man*'s "presumption that the parties intended for retiree benefits to vest" (App. A, pages 9 and 10) to find vested retiree health care benefits despite strong anti-vesting language in Section 1A of the various

insurance agreements not only requires reversal, but it illustrates why Certiorari is required.

The insidiousness of the *Yard-Man* inference/presumption is apparent from the court's backwards interpretation of the insurance agreement. Applying the presumption to find, in the first instance, that the term "continued" in Section 9C makes those benefits "unambiguous" and vested, permits the court to then use Section 1A's durational limitation language to create an ambiguity instead of to resolve one. In so doing, the court disregards the fact that it is only because of Section 1A's durational limitation language that the specific date-of-death language in Section 9B is needed in order to vest benefits for the pre-July 1988 retirees; and Section 1A is the dispositive reason why the lack of similar date-of-death language in Section 9C prevents the vesting of benefits for post-July 1988 retirees.

The court's assertion that Section 9C "is unambiguous" standing alone, but that it "becomes ambiguous when read in the light of Section 1A" (App. A, page 12), not only stands the process of contract interpretation on its head, but it ignores established principles such as *Yard-Man's* own direction that consideration be given to "variations in the duration of...benefits" provided by the agreement. 716 F.2d at 1481. The variations between the durational language of Section 9B (providing an express date-of-death duration for benefits to pre-July 1988 retirees) and Section 9C (lacking any durational language for post-July 1988 retiree benefits), when viewed in light of Section 1A, should resolve the durational ambiguity of Section 9C's "continued" language in Petitioners' favor without the need for

the *Yard-Man* inference/presumption or any extrinsic evidence.

Not content to merely disregard the traditional principles of contract interpretation in favor of the *"Yard-Man* inference," the Sixth Circuit posits a new principle:

> When interpreting a collective bargaining agreement this court assumes that terms from previous collective bargaining agreements continue unchanged unless specifically renegotiated.

(App. A, page 13). Under this principle, for which no authority is cited, the four corners of the contract become almost meaningless as the rights and obligations are defined as much by what language is *missing* from the contract as they are by the language that is included.

The patent error of such reasoning is manifested by the court's assertion that "it defies common sense that the union would give up vested benefits for retirees to get unvested benefits for the spouses of retirees." (App. A, page 13). The court's attempt to substitute its *ex post facto* speculation about the parties' intentions under the guise of "common sense" disregards not only the four corners of the agreement, but inexplicably rejects the distinct possibility that the Union would give up vested benefits for retirees to get even better (albeit unvested) benefits for those same retirees *along with* unvested benefits for spouses, surviving spouses and eligible dependents who never before had them, especially if the Union believed that those enhanced benefits would continue indefinitely under future insurance agreements.

Finally, the Sixth Circuit's reference to the insurance agreements' lack of a reservation of rights clause as further indication that the parties intended the post-July 1988 retirees' health care benefits to vest, ignores the fact that, by its very nature, a reservation of rights clause evidences the parties' desire to permit the employer to modify or eliminate benefits at any time *during the term of the agreement.* The absence of such a provision does not, however, conversely indicate the parties' intent that benefits extend *beyond the term of the agreement.*

Given that distinction, the answer to the court's rhetorical inquiry, at page 11 of its decision, about "what other date than the death of the retiree or the spouse could the word 'continue' apply" is obvious: the expiration date of the insurance agreement.

II. THE THIRD, FIFTH, SEVENTH AND EIGHTH CIRCUITS REJECT THE *YARD-MAN* INFERENCE/PRESUMPTION

The split over the *Yard-Man* inference/ presumption cannot be more apparent than in the language of a recent Third Circuit case, *International Union v. Skinner Engine Co.*, 188 F.3d 130 (3rd Cir. 1999): "We cannot agree with *Yard-Man* and its progeny that there exists a presumption of lifetime benefits in the context of employee welfare benefits." 188 F.3d at 140.

That court went on to express its concern "that the *Yard-Man inference* may be contrary to Congress' intent in choosing specifically not to provide for the vesting of employee welfare benefits." Id. at 141.

That same concern was expressed over a decade earlier by the Eighth Circuit in *Anderson* v. Alpha Portland Industries, Inc., 836 F.2d 1512 (8th Cir. 1988):

> Second, we disagree with *Yard-Man* to the extent that it recognizes an inference of an intent to vest. Congress explicitly exempted welfare benefits from ERISA's vesting require-ments. It, therefore, seems illogical to infer an intent to vest welfare benefits in every situation where an employee is eligible to receive them on the day he retires.

836 F.2d at 1517. The Eighth Circuit went on to state that "it is not at all inconsistent with labor policy to require plaintiffs to prove their case [for vested welfare benefits] without the aid of gratuitous inferences." *Id.*

The Fifth Circuit, in *International Association of Machinists v. Masonite Corp.*, 122 F.2d 228 (5th Cir. 1997), expressly elected to interpret collectively bargained insurance agreements "[w]ithout the benefit of this inference" that retiree benefits are vested. 122 F.3d at 232. The court's rejection of the *Yard-Man* inference, while not by name, followed its earlier expression of skepticism about that inference in *United Paperworkers Int'l Union v. Champion Int'l Corp.*, 908 F.2d 1252, 1261 n. 12 (5th Cir. 1990).

Although the Seventh Circuit's plurality decision in *Bidlack v. Wheelabrator Corp.* 993 F.2d 603 (7th Cir. 1993) also does not reject the *Yard-Man* inference/presumption by name, the plurality opinion, written by Judge Posner and concurred in by Judges Cudahy, Ripple and Rovner, establishes a "weak no-vest rule" that presumes welfare

benefits do not vest where the contract language is ambiguous and a "preponderance of the [extrinsic] evidence does not show that the parties intended the benefits to vest." 993 F.2d at 611.

Notably, four judges of that court dissented on the basis that, under this Court's decision in *Litton Financial Printing Division v. NLRB*, 501 U.S. 190, 207, 111 S.Ct. 2215, 2226, 115 L.Ed.2d 177 (1991), there should be a strong presumption against vesting of benefits:

> But the presumption is and always has been that benefits mentioned in a collective bargaining agreement do not vest.
>
> * * *
>
> [T]he lead opinion does not discuss *Litton*, which said that it takes "explicit terms" to create benefits surviving the expiration of a collective bargaining agreement. The concurring opinion invites us to look past the text of the agreement to the "intent of the parties" but does not explain how this can be squared with *Litton*'s emphasis on words rather than mental states. Op. at 612, n. 2. Looking for "explicit terms," and preferring the actual content of the parties' agreement to the supposed content of the parties' heads, serves vital functions.

993 F.2d at 617.

III. THE SIXTH CIRCUIT'S DECISION BELOW IS INCONSISTENT WITH THE MOST RECENT PRIOR DECISIONS OF THAT COURT

The Sixth Circuit's decision in this case, when compared with decisions from that circuit recently preceding it, suggests a split even *within* that court as to the vesting of retiree welfare benefits and how contracts providing for them should be interpreted.

Almost one year to the day before the Sixth Circuit decided this case, it decided *Sengpiel v. B.F. Goodrich Company*, 156 F.3d 660 (6th Cir. 1998), *cert. denied*, 119 S.Ct. 1249, 143 L.Ed. 2d 347 (1999). Without mentioning *Yard-Man*, inferences, or presumptions, the *Sengpiel* court affirmed the lower court's entry of summary judgment against plaintiff retirees on their claim that their welfare benefits were vested and, therefore, could not be reduced. In rejecting plaintiffs' arguments, the court held that the relevant welfare benefits plan language -- such as "if you retire and are eligible for a pension you shall continue to have the same health coverage -- "falls far short of expressing a clear intent to render such benefits 'forever unalterable.'" 156 F.3d at 668.

Only nine months earlier, that court, *en banc*, in *Sprague v. General Motors Corp.*, 133 F.3d 388 (6th Cir.), *cert. denied*, 118 S.Ct. 2312, 141 L.Ed.2d 170 (1998) -- again without mentioning *Yard-Man*, inferences, or presumptions -- affirmed the lower court's entry of summary judgment against plaintiff retirees on their claim for lifetime health care coverage at no cost. That court began by noting that:

> Because vesting of welfare plan benefits is not required by law, an employer's commitment to vest such benefits is not to be inferred lightly; the intent to vest "must be found in the plan documents and must be stated in clear and express language." (citing *Wise v. El Paso Natural Gas Co.*, 986 F.2d 929, 937 (5th Cir.), *cert. denied*, 510 U.S. 870, 114 S.Ct. 196, 126 L.Ed.2d 154 (1993).

133 F.3d at 400.

Not only did the *Sprague* court hold that benefit plan language failed to clearly and expressly state an intent to vest retiree health care benefits, but it also held that the retirees "may not invoke oral statements by GM personnel in order to modify the terms of the written plan," 133 F.3d at 403, a clear repudiation of the ploy of using the *Yard-Man* inference/presumption to create an ambiguity and then resolving it with extrinsic evidence of subsequent oral statements concerning what a party or its representatives believed.

It appears obvious from comparing the decision in this case with *Sengpiel* and *Sprague* that, even within the Sixth Circuit itself, the outcome of cases involving retiree health care benefits depends less on principles of contract interpretation and labor policy, and more on the luck of the draw as to the identity of the members of the panel. That situation alone justifies this Court's supervisory review.

CONCLUSION

Since 1983, federal employment benefits law has been burdened with, if not perverted by, the *Yard-Man* inference/presumption that

> when the parties contract for benefits which accrue upon achievement of retiree status, there is an inference that the parties likely intended those benefits to continue so long as the beneficiary remains a retiree.

Yard-Man, 716 F.2d at 1482. That inference/presumption has become a dangerous tool with which a court can manipulate contractual language -- at the expense of the "four corners" rule and traditional contract interpretation principles -- to create ambiguity that the court can then resolve with extrinsic evidence about what the parties intended when they contracted.

BVR and Unitron have been the victims of such manipulation, as have numerous other employers who have been unwittingly saddled with backbreaking retiree welfare liabilities not because of language they knowingly included in the agreements that they signed, but because of language that was overlooked -- express anti-vesting language -- that permitted a court to infer or presume the parties' intent to vest lifetime welfare benefits from whatever subjective, partisan extrinsic evidence might be available.

In the absence of guidance by this Court, the courts of appeals will remain at odds; Congress' exemption of retiree welfare benefits from ERISA's vesting requirements will continue to be ignored in several jurisdictions; and employers and employees alike will continue to be

vexed by the uncertainty that the current situation injects into their business relationships.

BVR and Unitron pray that Certiorari be granted; that this Court resolve the clear and substantial conflict of decisions by the various circuit courts of appeals; and that the lower court's decision be reversed.

Respectfully submitted,

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in Part Plaintiffs' Motions For Summary
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28 U.S.C. §2101 ..... G1-G2

28 U.S.C. §1254 ..... H1

JURISDICTIONAL STATUTE:

28 U.S.C §1331 II

RECOMMENDED FOR FULL-TEXT PUBLICATION
Pursuant to Sixth Circuit Rule 206
ELECTRONIC CITATION:
1999 FED App. 0330P (6th Cir.)
File Name: 99a0330p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

International Union, United
Automobile, Aerospace
and Agricultural Implement
Workers of America,
and Its Local Union No. 540;
Richard Pollard; Ronald Manke;
Thomas Eldon; Allen Lawrence,
Plaintiffs-Appellees,

v. No. 99-1024

BVR Liquidating, Incorporated,
formerly known as Beaver
Precision Products, Inc.;
Unitron, Inc.,
Defendants-Appellants.

Appeal from the United States District Court
for the Eastern District of Michigan at Ann Arbor.
Nos. 97-60151; 97-60210--Barbara K. Hackett,
District Judge.
Argued: August 13, 1999
Decided and Filed: September 14, 1999
Before: MERRITT, KENNEDY, and DAUGHTREY,
Circuit Judges.

COUNSEL

ARGUED: Robert J. Trizna, SCHUYLER, ROCHE & ZWIRNER, Chicago, Illinois, for Appellants. Michael F. Saggau, Detroit, Michigan, for Appellees. **ON BRIEF:** Robert J. Trizna, SCHUYLER, ROCHE & ZWIRNER, Chicago, Illinois, Daniel G. Wyllie, DYKEMA GOSSETT, PLLC, Detroit, Michigan, for Appellants. Michael F. Saggau, Detroit, Michigan, for Appellees.

OPINION

KENNEDY, Circuit Judge. Plaintiffs, Local No. 540, et al., filed suit against defendants BVR Liquidating, Inc. and Unitron, Inc. to enforce the provisions of the collective bargaining agreements ("CBA").[1] This suit arose out of the defendants' closure of its Troy, Michigan production plant. Although the plaintiffs raised many claims in the district court, this appeal concerns only one of these claims. Plaintiffs contend

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[1] This appeal concerns three different Collective Bargaining Agreements; (1) the 1988-92 agreement; (2) the 1991-1994 agreement; and (3) the 1994-1997 agreement. Because the relevant provisions are identical in all three agreements they will be referred to collectively as the CBAs.

that retirees' rights to health care[2] benefits provided for in the insurance agreements have vested and that the defendants have violated the terms of the agreements by terminating these benefits. Defendants argue that the retiree health care benefits provided for in the insurance agreements are limited in duration to the term of the CBA.[3] Because defendants terminated the retiree health care benefits upon the expiration of the latest CBA, defendants state that they did not breach the terms of the agreement.

The district court found that the retirees' lifetime health care benefits had vested; thus, the plaintiffs were entitled to summary judgment on this issue. Defendants timely appealed.

Defendants raise one issue on their appeal of the district court's granting of summary judgment in favor of the plaintiffs: (1) whether the district court erred in finding that the plaintiffs were entitled to vested lifetime retiree health care benefits under the CBAs.

I. Facts

This appeal concerns the interpretation of the CBAs and accompanying insurance agreements governing the workplace relationships between the union and the company[4] for the years between 1988 and 1997.

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[2] Defendants conceded, in the district court, that the life insurance benefits vested and that they are obligated to provide retirees with a paid-up life insurance policy for $3,500.

[3] The length of each CBA and accompanying insurance agreement was three years.

[4] Defendants BVR and Unitron are referred to collectively as "the company." Unitron operated the business prior to May 31,1994, when it sold the business to Beaver Precision Parts. On April 7, 1997, Beaver Precision Parts sold essentially all its assets and changed its name to BVR Liquidating, Inc.

Although there were three different CBAs in effect during this time-frame, both parties concede that the relevant provisions do not differ. Pursuant to these CBAs, the company and the union entered into separate insurance agreements that specified the insurance benefits provided to union members and retirees. The focus of this appeal is the health care benefits provisions of these insurance agreements.

Prior to 1988, the CBA provided lifetime health care benefits for individuals who retired between 1985 and 1988. In the negotiations for the 1988-1991 CBA, the parties made some significant changes to the insurance agreement by increasing the amount of paid-up life insurance by $1,000, by providing health care benefits for retirees' spouses and eligible dependents and by increasing coverage for all participants to include vision and hearing benefits. To effectuate these changes the parties redrafted the language of the benefits provision. As a result of this redrafting, the language, found in the 1985-1988 agreement, stating that the retirees' benefits continued until the date of death was not included in the paragraph providing for increased benefits for those who retired after July 1, 1988. The paragraph used the term "continued."[5] It is this change that is central to this appeal.

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[5] The 1988-1991 agreement provides in relevant part:

Coverage for Retired Employees

9A. *Employees Who Retired Before June 1, 1985 Through June 30, 1988*

Employees who retired before June 1, 1985 and prior to July 1, 1988 shall have group insurance coverage continued in accordance with the applicable agreements in effect at the time of their retirement.

On April 7, 1997 the company sold essentially all of its assets, closed the Troy plant and terminated all of its employees. The company also informed the employees who had retired after June 30, 1988 that they would no longer receive the health care benefits to which they had been entitled under the CBAs and the insurance agreements. Plaintiffs filed suit against the defendants to enforce the provisions of the CBAs.

9B. *Employees who Retire On or After June 1, 1985*

Employees who retire on or after June 1, 1985 shall have paid-up life insurance in the amount of $2,500 and shall have the hospital-surgical-medical (excluding hearing and vision) and prescription drug coverages set forth in Section 6 of this Insurance Agreement continued after retirement until their date of death. All other group insurance coverages shall be terminated as of the date or retirement.

9C. *Employees who Retire On or After July 1, 1988*

Employees who retire on or after July 1, 1988 shall have paid-up life insurance in the amount of $3,500 and shall have the hospital-surgical-medical, vision, prescription drug, and hearing coverages (excluding dental) as set forth in Section 6 of this Insurance Agreement continued for themselves, their spouses, surviving spouses and eligible dependents.

9D. *Surviving Spouses of Active or Retired Employees*

If an Employee who retires after June 4, 1988 dies during the term of this Agreement, such Employee's Surviving Spouse and Eligible Dependents shall have their hospital-surgical-medical, prescription drug, hearing and vision coverages (excluding dental) continued for them at Company expense.

If an active Employee dies during the term of this Agreement, such Employee's surviving spouse and eligible dependents shall have their hospital-surgical-medical, prescription [drug], hearing, and vision coverage (excluding dental) continued for them, at Company expense, for sixty (60) days from the Employee's date of death.

Plaintiffs argued that they were entitled to lifetime health care benefits because the rights had vested prior to the expiration of the contract. Plaintiffs stated that Section 9C of the agreement was unambiguous and that the language supported their interpretation of the provision. Because the provision stated that benefits continue plaintiffs argued that the parties intended that the benefits vest. Although the plaintiffs contended that the language of the agreements was unambiguous, the plaintiffs also offered extrinsic evidence to support their interpretation of the contract that the health benefits continued during their retirement. The plaintiffs provided three affidavits of union members who attended the negotiation sessions where the CBAs and insurance agreements were drafted. These affidavits state that the elimination of lifetime retiree health care benefits was not a subject discussed at any of the sessions. The plaintiffs also provided the affidavits of ten retired employees of the company who retired after 1988 and who had spoken with company agents about the benefits they would receive upon retirement. These affidavits state that the company agents conveyed the information that retirees were entitled to lifetime health care benefits.[6]

Defendants also argued that the language of the insurance agreements was unambiguous. Defendants, however, focused on the language of Section 1A of the agreement. Section 1A states that benefits are provided for the term of the agreement unless otherwise provided. Because Section 9C provided no

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[6] The plaintiffs also offered the affidavit of the wife of one of the employees. She states that she attended a meeting with her husband and a company agent where the agent stated that retiree health care benefits were for life.

durational time-frame the company argued that it was permitted to terminate benefits at the expiration of the agreement.

The plaintiffs filed a motion for summary judgment on the issue of whether the retirees' health care benefits had vested. In response to this motion and the plaintiffs' supporting affidavits, the defendants included affidavits from two company agents who were members of the negotiating team. Only one of these individuals, however, attended the negotiating sessions with the union. Both affidavits state that the language of the agreements does not provide for lifetime health care benefits for retirees. In addition, both affidavits state that although the affiants cannot remember the conversations set forth in the plaintiffs' affidavits, they do not believe they made the statements attributed to them.

The district court ruled in favor of the plaintiffs and granted their motion for summary judgment. Although the district court believed that the express language of the agreement supported plaintiffs' argument that lifetime retiree health care benefits had vested, the court also found that the extrinsic evidence supported the plaintiffs' interpretation of the agreement. The court stated that the affidavits of the negotiators confirmed the parties' intent and that the affidavits offered by the defendants contained "irrelevant legal conclusions." In addition, the court noted that the retirees' affidavits showed that the company had assured them that they would receive lifetime benefits and that the defendants offered no contradictory evidence. Defendants appealed.

II. Discussion

This court reviews a district court's entry of summary judgment de novo. *See Sengpiel v. B. F.*

Goodrich Co., 156 F.3d 660, 664 (6th Cir. 1998). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Although defendants contend that summary judgment is appropriate only if the contract is unambiguous and clear, "the mere existence of a colorable factual dispute will not defeat a properly supported motion for summary judgment. A genuine dispute between the parties on an issue of material fact must exist to render summary judgment inappropriate." *Hill v. White*, No. 98-5860, 1999 U.S. App. LEXIS 18754, at *6 (6th Cir. Aug. 13, 1999) (citations omitted). The extrinsic evidence demonstrates that there is no genuine issue of material fact as to the parties' intent and the relevant provision becomes ambiguous only if read in conjunction with other provisions in the contract; thus, summary judgment is appropriate and the district court was correct in determining that the lifetime retiree health care benefits had vested.

This court in *International Union v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), provided a framework for interpreting the provisions of a CBA. The *Yard-Man* court noted that whether benefits survive the termination of a CBA depends on the intent of the parties. 716 F.2d at 1479. To discern the intent of the parties, a court should apply the basic rules of contract interpretation.

> For example, the court should first look to the explicit language of the collective bargaining agreement for clear manifestations of intent. . . . The court should also interpret each provision

> in question as part of the integrated whole. If possible, each provision should be construed consistently with the entire document and the relative positions and purposes of the parties.

Id. (citations omitted). In addition, the "terms must be construed so as to render none nugatory and avoid illusory promises." *Id.* at 1480. Finally, a court should consider extrinsic evidence only when the terms of the contract are ambiguous. *See id.*

Applying these rules of contract interpretation, the *Yard-Man* court stated that "retiree benefits are in a sense 'status' benefits which, as such, carry with them an inference . . . . that the parties likely intended those benefits to continue as long as the beneficiary remains a retiree." *Id.* at 1482. The court acknowledged that the context in which collective bargaining agreements arise provides for a presumption that the parties intended for retiree benefits to vest. Although this inference does exist,

> Yard-Man does not shift the burden of proof to the employer, nor does it require specific anti-vesting language before a court can find that the parties did not intend benefits to vest. Rather, the Yard-Man inference, and the other teachings of the opinion regarding contract interpretation and the consideration of extrinsic evidence, simply guide courts faced with the task of discerning the intent of the parties from vague or ambiguous CBAs.

Golden v. Kelsey-Hayes Co., 73 F.3d 648, 656 (6th Cir. 1996).

The defendants argue that *Yard-Man* is not applicable to this case. To support their argument that the *Yard-Man* presumption should not apply, the defendants cite to *Sengpiel*. In *Sengpiel*, the court

stated "[b]ecause vested benefits are forever unalterable, and because employers are not legally required to vest them, this Court recently held that 'the intent to vest [welfare benefits] "must be found in the plan documents and must be stated in clear and express language."'" 156 F.3d at 667 (quoting *Sprague v. General Motors Corp.*, 133 F.3d 388, 400 (6th Cir 1998) (en banc) (quoting *Wise v. El Paso Natural Gas Co.*, 986 F.2d 929, 937 (5th Cir. 1993))). Defendants contend that the CBA does not express a clear and affirmative intent to vest benefits, thus, the plaintiffs are entitled to no relief.

Sengpiel, however, is distinguishable from this case. In both *Sengpiel* and *Sprague*, the court was confronted with a benefit plan unilaterally instituted by the company. In this case, the benefit plan was negotiated between the company and the union. The *Yard-Man* presumption was specifically intended to apply in the context of a collective bargaining agreement. The *Yard-Man* court noted that "[b]enefits for retirees are only permissive not mandatory subjects of collective bargaining. As such, it is unlikely that such benefits, which are typically understood as a form of delayed compensation or reward for past services, would be left to the contingencies of future negotiations." 716 F.2d at 1482 (citations omitted). Although the *Yard-Man* presumption is only an inference that the parties intended for benefits to vest, it is appropriate for the court to apply this presumption in this case.

This case also differs from *Sengpiel* and *Sprague* in that these CBAs, unlike the employers' plans in those cases, do not contain provisions reserving to the company the right to unilaterally modify or terminate the benefits contained in the agreement. The CBAs in

this case, provide that the agreement will "continue in full force and effect without change" until the agreed upon expiration date. The agreements in both *Sengpiel* and *Sprague* contained a "reservation of rights" provision. This court has held that the inclusion of a "reservation of rights" provision establishes that there was no intent for benefits to vest. *See eg., Sprague*, 133 F.3d at 400 (noting that the court had rejected on numerous occasions the argument that ambiguity exists when the plan "entitle[s participants] to health insurance at no cost throughout retirement and that the terms of the current plan are subject to change"); *Musto v. American Gen. Corp.*, 861 F.2d 897, 907 (6th Cir. 1988) (stating that the court in *In re White Farm Equip. Co.*, 788 F.2d 1186 (6th Cir. 1986) "concluded that where the power to terminate such a welfare plan has been reserved, it may be exercised"). Because the unilateral nature of the benefits plan and the existence of the "reservation of rights" provision, significant factors influencing the court's decision in both *Sengpiel* and *Sprague*, do not exist in this case, this court is better guided by the *Yard-Man* decision.

The *Yard-Man* decision directs this court to consider the express language of the benefit provision. Section 9C provides that retirees shall have health care benefits "continued for themselves, their spouses, surviving spouses and eligible dependents." This court has found similar language in other agreements to evidence an intent to vest benefits. For example, in *Helwig v. Kelsey-Hayes Co.*, 93 F.3d 243, 248 (6th Cir. 1996), this court determined that the language "[w]hen you are retired, your Health Care coverages, except for vision, are continued without cost to you," demonstrated an intent to vest benefits. *See also Smith v. ABS Industries, Inc.*, 890 F.2d 841, 847 (6th Cir.

1989) (finding that the language "[b]enefits will continue for retirees" supported its decision that the retiree benefits had vested). The *Helwig* court also considered this provision, applicable to all employees who retired, in conjunction with a provision, applicable to employees who retired at age 65 or older, which contained the language, "will be continued for the rest of your life." 93 F.3d at 248. By reading the two provisions together, the court found that the parties intended for benefits to vest. The agreement in this case contains a similar provision. Section 9B identifies those employees who retired before July 1, 1988 and states that their benefits are "continued after retirement until their date of death." When Section 9C is considered in conjunction with 9B and interpreted in light of *Helwig*, Section 9C can be interpreted as vesting lifetime health care benefits. Indeed, to what other date than the death of the retiree or the spouse could the word "continue" apply? The district court found that the language of Section 9C was unambiguous and demonstrated the parties' intent to provide retirees and their dependents lifetime health care benefits.

Although the language of Section 9C is unambiguous, *Yard-Man* requires us to read each provision in light of the agreement as a whole. 716 F.2d at 1479. Section 9C becomes ambiguous when read in light of Section 1A. Because the district court considered Section 9B in interpreting Section 9C it would be improper not to examine the effect of Section 1A on the interpretation of Section 9C. Section 1A states that "[t]hese benefits will be provided at no cost to the Employees or retirees for the term of this Agreement except where the Plan specifically provides otherwise." Defendants argue that Section 9C does not

provide a specific duration period; thus, Section 1A limits the benefits of Section 9C to the length of the agreement. A consideration of Section 9C in light of Section 1A requires this court to find that the language of this agreement is ambiguous.

When a contractual provision is ambiguous, the court may turn to extrinsic evidence to discern the intent of the parties. *See ABS Industries, Inc.*, 890 F.2d at 846 n.1. The first item of extrinsic evidence that we consider is the insurance agreement associated with the 1985-1988 CBA. Plaintiffs contend that the changes between the 1985-1988 agreement and the 1988-1991 agreement were intended to increase the benefits made available to retirees. The 1988-1991 agreement increased the amount of paid-up life insurance by one thousand dollars. This agreement also extended health care benefits to retirees' spouses and dependents and increased coverage for all participants to include vision and hearing benefits. Plaintiffs argue that these changes would be illusory if they were to terminate upon the expiration of the agreement. Defendants respond that the imposition of a durational limitation on the benefits was a trade-off for these increased benefits. Further, the defendants suggest that the benefits were not illusory because the benefits could be continued indefinitely with the adoption of each new CBA.

The extrinsic evidence proffered by both parties supports the plaintiffs' argument that the increased benefits were not a tradeoff for non-vested benefits. When interpreting a collective bargaining agreement this court assumes that terms from previous collective bargaining agreements continue unchanged unless specifically renegotiated. Plaintiffs offer affidavits of three individuals who participated in the negotiating

sessions between the company and the union. These three affidavits state that no discussion about altering the duration of retiree health care benefits took place in these sessions. Defendants offer two affidavits which do not directly address this issue, but instead, set forth legal conclusions as to the meaning of the relevant provisions. Defendants offer no evidence to contradict plaintiffs' affidavits; thus, there is no question of fact as to the absence of negotiations on this issue. Because plaintiffs' extrinsic evidence supports their interpretation of the relevant provisions of the agreement this court finds that the benefits vested. Indeed, it defies common sense that the union would give up vested benefits for retirees to get unvested benefits for the spouses of retirees.

In addition to the affidavits of the negotiators, plaintiffs offer affidavits of retirees to support the company's interpretation of the agreement conveyed to them. These affidavits state that company agents informed retirees that their health care benefits would be lifetime benefits. Defendants proffer the affidavits of the two agents in which they state that although they do not remember the particular conversation, they believe they did not make these statements. The district court found that because the defendants' affidavits did not contradict the plaintiffs' affidavits there was no issue of fact to be resolved. The district court stated that the plaintiffs' affidavits bolstered their contention that lifetime retirees' benefits had vested.

This court has held that a contract cannot be altered by representations of company agents. *See Sprague*, 133 F.3d at 402-03. Yet, the district court did not err in finding that these statements supported the plaintiffs' interpretations of the relevant provisions.

If the provisions had unambiguously stated that the benefits did not vest, then this court could not find that verbal agreements modified the plan. This court can consider oral statements, however, when the language of the plan is ambiguous. Although these affidavits alone may not have been sufficient to demonstrate the parties' intent, the affidavits, in conjunction with the other extrinsic evidence, provide further support for the district court's interpretation of the agreement.

Although the language of Section 9C of the CBA appears unambiguous, it becomes ambiguous when read in light of Section 1A. Applying principles of contract interpretation, it is appropriate to consider extrinsic evidence to discern the intent of the parties when the contract language is ambiguous. Because the district court was correct in finding that the extrinsic evidence proffered by the plaintiffs was persuasive this court affirms the district court's granting of summary judgment in favor of the plaintiff.

III. Conclusion

For the foregoing reasons, this court affirms the judgment of the district court.

99-1024

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA AND ITS LOCALUNION NO. 540, ET AL.

Plaintiffs-Appellees,

v. ORDER

BVR LIQUIDATING, INCORPORATED, FORMERLY KNOWN AS BEAVER PRECISION PRODUCTS, INC., ET AL.,

Defendants-Appellants.

BEFORE: MERRITT, KENNEDY, and DAUGHTREY, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original

submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

s/_____
Leonard Green, Clerk

192281

IN THE DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA,
AND ITS LOCAL UNION NO. 540,

Plaintiffs,

Case No.

v.

Hon.

LLOYD J. BARETZ; BEAVER
PRECISION PRODUCTS, INC.;
and BVR LIQUIDATING, INC.,

Defendants.

_____/

MICHAEL F. SAGGAU (P35326)
Attorney for Plaintiffs
925 Ford Building
Detroit, Michigan 48226
(313) 962-2770

_____/

At a session of the U. S. District
Court, held in the City of Detroit,
State of Michigan on _____

HON._____PRESIDING

TEMPORARY RESTRAINING ORDER

This Court having reviewed the Complaint filed in this matter and the affidavits and other pleadings

submitted by Plaintiffs, and having found that, based on those pleadings:

1. Plaintiffs represent hourly employees of Defendant Beaver Precision Products, Inc. ("BPP").

2. The hourly employees of Defendant EPP are threatened with irreparable loss of pension benefits, health care benefits, wages, and other amounts owed under the terms of collective bargaining agreements unless an Temporary Restraining Order is issued.

THEREFORE, IT IS ORDERED THAT:

A) Defendants, their officers, agents, representatives, attorneys,. servants, employees, and all persons acting in concert or participation with them are temporarily enjoined from making or causing to be made, without order of this Court, any payment, other than payment of wages, vacation, holiday, disability, and cost of living benefits to current and former employees, payments to provide health care benefits to current and former employees, and payment, not to exceed $40,000-LPZ; of current day-to-day operational expenses incurred with respect to the winding down of EPP. This order shall not prevent payment of periodic pension or separation pay benefits to employees from funds previously deposited in pension, separation pay or other benefit trust funds.

B) Defendants shall place all current liquid assets of Defendant EPP, and all liquid assets derived in the future from additional sales of assets, in an interest bearing escrow account with a Michigan financial institution and shall inform Plaintiffs' counsel of the name and address of the institution and the account number and any other identifying information regarding the account;

C) No payments shall be made out of the escrow account except as provided in paragraph A) of this Order or as ordered by this Court; and

D) Defendants are enjoined from transfering or encumbering, without order of this Court, any asset of EPP except for full, fair, and present consideration in the form of liquid assets to be placed in escrow.

E) No security is required for the reason that no loss is likely to be suffered by Defendants as a result of the entry of this Order.

F) A hearing on Plaintiffs' Motion for Preliminary Injunction is set for 5/20, 1997 at 2p.m.

_____

U.S. DISTRICT COURT JUDGE

Dated: May 9, 1997

192240.1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND ITS LOCAL UNION NO. 540,

Plaintiffs,

Case No.97-CV-60151-AA

VS.

HON. BARBARA K. HACKETT

LLOYD J. BARETZ; BEAVER PRECISION PRODUCTS, INC.; BVR LIQUIDATING, INC., UNITRON, INCORPORATED, and SCOTT LEFKY,

Defendants.

PRELIMINARY INJUNCTION

On May 30, 1997, and June 4, 1997, a hearing was held in the above-captioned case regarding plaintiffs' motion for a preliminary injunction. For the reasons stated on the record on June 4, 1997,

IT IS ORDERED that plaintiffs' motion for a preliminary injunction hereby is GRANTED pursuant to the terms set forth in the temporary restraining order, paragraphs A through D, entered in this case on May 9, 1997.

IT IS FURTHER ORDERED that plaintiffs post bond in the amount of $50,000 pursuant to Fed.R.Civ.P. 65(c).

IT IS FURTHER ORDERED that plaintiffs and defendants file on or before June 11, 1997,

simultaneous briefs of no more than 20 pages excluding exhibits, addressing the contract interpretation issue of alleged lifetime retiree health care benefits.

IT IS FURTHER ORDERED that the court may revisit the entry of this preliminary injunction at the request of either party after the court determines whether the contract agreements at issue in this case guaranteed hourly employees lifetime health care benefits.

s/
BARBARA K. HACKETT
United States District Judge

Dated: June 5, 1997.

192236.1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND ITS LOCAL UNION NO. 540,

Plaintiffs,

vs.

Case No. 97-CV-60151-AA
HON. BARBARA K. HACKETT

LLOYD J. BARETZ; BEAVER PRECISION PRODUCTS, INC.; BVR LIQUIDATING, INC., UNITRON, INCORPORATED, and SCOTT LEFKY,

Defendants.
_____/

ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

This action arises out of the alleged breach of a collective bargaining agreement between plaintiffs International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local Union No. 540 and defendant Beaver Precision Products (BPP). Plaintiffs seeks partial summary judgment against defendant BPP only for the liability portion of Count I. Count I alleges that defendants BPP, BVR Liquidating, Inc. and Unitron are liable for lifetime retiree health care benefits. Defendant BPP opposes the motion on the alleged grounds that the collective bargaining agreement only promised retirees health care benefits for the term of the collective bargaining agreement. For the reasons

stated below, and in accordance with Sixth Circuit precedent, plaintiffs, motion for partial summary judgment shall be granted.

BACKGROUND

Plaintiffs UAW and Local Union 540 filed this action for wages and benefits allegedly owed to them by BPP under the terms of their collective bargaining agreements pursuant to the Labor Management Relations Act (LMRA), 29 U.S.C. §185. On April 7, 1997, BPP abruptly closed and padlocked its sole remaining plant which is located in Troy, Michigan. On the same date, hourly workers were told of the plant closing and of their immediate termination at an employee meeting held away from the plant. At that time, there were approximately 117 hourly employees. Defendant BPP told hourly workers of its intention to honor its obligations under the CBA until June 7, 1997, the date that the most recent CBA between plaintiffs and defendant BPP was set to expire. Defendant BPP also has taken the position that its obligation to pay retiree life insurance and health care benefits under the CBA expired on the date the CBA expired which is June 7, 1997. Plaintiffs contend that the CBA promised them life insurance and health care benefits for life.

The term of the most recent CBAs between the parties is June 4, 1994, through June 7, 1997. Each of the CBAs incorporates a separate insurance agreement.[1] The parties agree that the 1985

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[1] Article IX of the CBAs provides:
The parties have provided for a Retirement Plan, a Supplemental Unemployment Benefit Plan, and an Insurance Plan, by supplemental agreements which are expressly made a part hereof as if set forth herein. No matter respecting the provisions of such Plans shall be subject to the Grievance Procedure provided in this Agreement.

insurance agreement provided for lifetime retiree health benefits, but the parties dispute whether the 1988 Insurance Agreement continued to do so. Plaintiffs argue that the 1988 Agreement expanded retirees, health benefits to not only cover retirees for life, but their surviving spouses and dependents as well. Defendants, on the other hand, maintain that the 1988 Agreement discontinued the lifetime benefits and terminated retiree health benefits on the date the CBA expired.

Plaintiffs claim that the company never proposed or suggested during negotiations in 1988, 1991 or 1994 that lifetime retiree health care benefits be ended. Plaintiffs have submitted a copy of the company's written "Final Proposal" in 1988 which states that the negotiated improvements for retirees would be "in addition to benefits they are already receiving."

Plaintiffs and defendants each contend that the court need not look at extrinsic evidence in resolving the present dispute. Both maintain that the 1988 Insurance Agreement supports their conflicting interpretations of the contract. The 1988 Insurance Agreement provides:

> SECTION 9
> COVERAGE FOR RETIRED EMPLOYEES
> 9A. Employees Who Retired Before June 1, 1985
> Employees who retired before June 1, 1985 shall have group insurance coverage continued in accordance with the applicable agreements in effect at the time of their retirement.

9B. Employees Who Retire on or after June 1, 1985 Through June 30, 1988

Employees who retire on or after June 1, 1985 and prior to July 1, 1988 shall have paid-up life insurance in the amount of $2,500 and shall have the hospital- surgical -medical (excluding hearing and vision) and prescription drug coverages set forth in Section 6 of this Insurance Agreement continued after retirement until their date of death. All other group insurance coverages shall be terminated as of the date of retirement.

9C. Employees Who Retire on or after July 1, 1988

Employees who retire on or after July 1, 1988 shall have paid-up life insurance in the amount of $3,500 and shall have the hospital-surgical-medical, vision, prescription drug, and hearing coverages (excluding dental) as set forth in Section 6 of this Insurance Agreement continued for themselves, their spouses, surviving spouses and eligible dependents.

9D. Surviving Spouses of Active or Retired Employees

If an Employee who retires after June 4, 1988 dies during the term of this Agreement, such Employee's Surviving Spouse and Eligible Dependents shall have their hospital-surgical-medical, prescription drug, hearing and vision coverages (excluding dental) continued for them at Company expense.

> If an active Employee dies during the term of this Agreement, such Employee's surviving spouse and eligible dependents shall have their hospital - surgical -medical, prescription drug, hearing and vision coverage (excluding dental) continued for them, at Company expense, for sixty (60) days from the Employee's date of death.

The parties agree that the above-quoted language of the 1988 Insurance Agreement also was incorporated into the 1991 and 1994 Insurance Agreements without significant change. Plaintiffs argue that Section 9C provides for lifetime retiree health care benefits for employees who retire after July 1, 1988. In support of this argument, plaintiffs cite to several opinions decided by the Sixth Circuit wherein the court found that lifetime retiree benefits were promised based on contractual language similar to that presented in Section 9C. See Helwig v. Kelsey Hayes, 93 F.3d 248 (6th Cir. 1996), cert. denied, 117 S.Ct. 690 (1997); UAW v. Yard-man, Inc., 716 F.2d 1476 (6th Cir. 1983), cert. denied, 465 U.S. 1007 (1984).

The parties agree that Sixth Circuit precedent requires the court to first interpret the disputed provision of the insurance agreement, which in this case is Section 9C. Plaintiffs argue that Section 9C which promises employees retiring after- July 1, 1988, that their health care benefits "will continue," is unambiguous, and that standing on its own, it clearly promises those retirees lifetime health care benefits.--- Defendant BPP, on the other hand, argues that Section 9C did not provide for lifetime benefits because it did not expressly provide for lifetime coverage as Section 9B did. Defendant BPP also argues that Section 9C should be interpreted based on references to other provisions of the agreement. Defendant BPP argues

that the court should read Section 1A of the agreement as limiting the benefits promised in Section 9C. Section 1A provides:

> These benefits will be provided at no cost to the Employees or retirees for the term of this Agreement except where the Plan specifically provides otherwise.

Defendant BPP argues that when Section 1A is read together with Section 9C, that Section 9C must be read to provide employees who retire after July 1, 1988, with health care benefits only for the term of the collective bargaining agreement, which terminated on June 7, 1997. Plaintiffs argue that Section 1A should not be read to limit the lifetime benefit promised in Section 9C, because Section 9C is unambiguous and Section 1A is a general durational limitation which is insufficient to overcome the presumption established in Yard-Man that retiree benefits are lifetime benefits.

Although both sides maintain that the court need not examine extrinsic evidence in order to interpret the insurance agreement's provisions regarding retiree health care, plaintiffs and defendant BPP have both submitted affidavits in support of their arguments. Plaintiffs have submitted affidavits filed by three union negotiators and 11 retirees in support of their motion for summary judgment. The affidavits of the three union bargaining representatives, Andrew Gazetti, Andrew Lawrence, and Richard Pollard, state that during negotiations, BPP never suggested that lifetime retiree health care benefits be terminated and BPP agreed to extend retiree health care benefits after the death of a retiree for the surviving spouse.

Andrew Gazetti was employed by BPP from 1967 until the Troy plant closed on April 7, 1997. He was a member of the UAW Local 540 bargaining committee during negotiations in 1988 and 1991 and was the chief committeeman during the 1988

negotiations. In his affidavit, Gazetti states that during the 1988 and 1991 negotiations:

> No BPP representative ever proposed in negotiations that the lifetime health care coverage for retirees be ended. No BPP representative ever suggested that the lifetime health care coverage for retirees had been or should be ended. The company and UAW Local 540 did not agree to end or limit lifetime retiree health care, and never discussed such a possibility during the 1988 or 1991 negotiations in which I participated.

Similarly, Allen Lawrence, who was employed by BPP from 1985 until the plant shutdown on April 7, 1997, was a member of the UAW Local 540 bargaining committee during negotiations in 1988, 1991 and 1994, submitted an affidavit making the following statement:

> No BPP representative ever proposed in negotiations that the lifetime health care coverage for retirees be ended. No BPP representative ever suggested that the lifetime health care coverage for retirees had been or should be ended. The company and UAW Local 540 did not agree to end or limit lifetime retiree health care, and never discussed such a possibility during the 1988, 1991 or 1994 negotiations in which I participated.

UAW Local 540 negotiator for the years 1985, 1991 and 1994, Richard Pollard, also submitted a similar affidavit testifying that no BPP representative ever proposed during negotiations that lifetime health coverage for retirees be ended.

In response to the three UAW negotiators, defendant BPP submitted the affidavits of two BPP

employees, Betty Napper and Anne Bayoff, who claimed to be part of the BPP team that negotiated the collective bargaining agreements in 1985, 1988, 1991 and 1994. Napper and Bayoff were both human resource administrators for BPP. Plaintiffs submitted the affidavit of UAW Local 540 negotiator Phillip Denapoli who states that he was present at all bargaining sessions in 1988 and that Bayoff never sat at the bargaining table and never engaged in negotiations with any union representative. Neither Napper nor Bayoff claim that they or any other member of the BPP negotiating team told the UAW that lifetime retiree health care benefits would be terminated per the 1988 agreement. In her affidavit, Napper claims that during the 1988 negotiations:

> [b]ecause BPP was concerned with both the short-term and long-term costs of the enhancements to the insurance and pension benefits sought by the Union, some changes were made to the insurance and pension benefit language in order to at least partially offset the costs to BPP of the enhanced benefits.

Napper's affidavit further states:

> [a]t the time of the 1988 negotiations, the Insurance Agreement then in effect -- the 1985 Insurance Agreement, Paragraph 9B -- provided health care benefits to all BPP employees that retired after June 1, 1985 from the date of their retirement "until their date of death." That benefit was changed in the 1988 Insurance Agreement, which resulted in the limitation of lifetime retiree health care benefits to those employees who retired between June 1, 1985 and July 1, 1988;

> and its elimination for employees who retired on or after July 1, 1988.

Plaintiffs respond that Napper's affidavit does not contradict the specific statements of UAW bargainers Andrew Gazetti, Allen Lawrence and Richard Pollard, who each submitted affidavits stating that no BPP representative ever proposed or suggested that the lifetime health care coverage for retirees be ended. Plaintiffs argue that Napper's affidavit does not suggest that BPP negotiated with the UAW to reduce retirees, health care benefits, but merely offers a legal conclusion that the language in the 1988 Insurance Agreement should be read to end the lifetime guarantee.

Like Napper's affidavit, Bayoff's affidavit does not claim that BPP negotiators bargained to reduce retiree health care coverage nor does it claim that this alleged intent on the part of BPP was made known to the UAW Local 540. Instead, Bayoff's affidavit, like Napper's, claims that the contractual language of the 1988 Insurance Agreement eliminated lifetime coverage:

> [i]n response to BPP concerns over the costs of the benefit enhancement, BPP and the Union also agreed to changes in other benefits for the 1988 Insurance Agreement from those that were provided in the 1985 Insurance Agreement. For example, the language of Section 9 of the 1985 Insurance Agreement was changed in the 1988 Insurance Agreement so as to eliminate lifetime retiree health care benefits for any employee who retired after July 1, 1988.

Plaintiffs argue that Bayoff's affidavit should be rejected because it does not reference conduct or

communication between the contracting parties, but is merely conclusory.

Plaintiffs also submitted the affidavits of 11 employees who retired after July 1, 1988, stating that BPP assured them that their retiree health benefits were for life. Specifically, the 11 employees submitted affidavits stating that BPP made representations that they would have lifetime health benefits:

1. Richard Pollard's affidavit states that in December, 1992, he met with Bayoff to discuss his retirement benefits. He claims that he asked Bayoff if he would have lifetime health insurance and that she responded that he would have health insurance as long as he lived.
2. Roy Cinader states that prior to his retirement in January, 1992, he attended a meeting on August 1, 1991, with 12 other potential BPP retirees. He claims that Napper, Bayoff and other company representatives attended the meeting and explained retiree benefits. He claims that retirees asked whether life insurance and hospitalization benefits were for life and that company representatives said that they were for life.
3. Jacques Collier states that prior to his retirement in January, 1993, he discussed his retirement benefits with Bayoff in December, 1992. He states Bayoff told him that he and his wife would receive life insurance and hospitalization for the rest of their lives.
4. Patricia Dundas states that prior to her retirement in January, 1992, she attended a meeting in August, 1991, with other BPP employees considering

retirement. She states that Napper and Bayoff attended the meeting at which BPP representatives told employees that upon retirement they would receive optical, hearing and medical insurance for life. She further states that an employee specifically asked if health care benefits were for life and was told that they were.

5. Thomas Eldon states that prior to his retirement in January, 1993, he attended a meeting with other employees considering retirement. He states that company representatives, including Bayoff or Napper, or both, attended the meeting. He states that company representatives told employees that health care benefits would continue for the employee and the employee's spouse until they died.

6. Jerome Fisher states that prior to his retirement in January, 1992, a BPP representative gave him a description of his retiree benefits which states, in relevant part:

> **Health Insurance**
> Hospital/Medical/Surgical, Vision, Prescription Drug and Hearing (excluding Dental) continue for you, your spouse and any eligible dependents. When you die, your surviving spouse and eligible dependents shall have the same coverage as above

continued at Company expense.

7. Harold Gray states that prior to his retirement in January, 1992, he asked Napper about his retirement benefits. He states that Napper told him he would receive health insurance for the rest of his life and that his wife would also receive lifetime health insurance after he died.

8. Mary Lou Greenwood states that prior to her husband's retirement in February, 1992, she and her husband met with Bayoff who told them that retiree health insurance was for life.

9. Ronald Manke states that prior to his retirement in January, 1992, he asked Bayoff about his health insurance benefits and she told him that the benefits were for life.

10. James Nieto states that prior to his retirement in January, 1992, he attended a meeting with other employees considering retirement and was told that health benefits were guaranteed for life.

11. Roy Wiitanen states that prior to his retirement in January, 1993, he attended a meeting with other employees regarding retirement benefits. At that meeting, Napper told retirees that their health benefits were for life.

In an apparent attempt to contradict BPP employees who retired after July 1, 1988, who submitted affidavits stating that retirees were promised lifetime health care benefits, defendant BPP has submitted the affidavits of Napper and Bayoff. Napper's affidavit states:

> (a]t various times beginning in 1991 and continuing through 1993, Affiant met individually with a few BPP employees who were considering retirement. The purpose of those meetings was to discuss the terms of their retirement and the benefits available to them as retirees. Although Affiant does not currently have a clear independent recollection of the details of each of those meetings, she believes that she told the employees that, upon their retirement, health care benefits for them and their spouses would continue.

Napper's affidavit admits that she does not remember whether she told retirees that they would have lifetime health care benefits, but states that she "believes" she told them that their benefits "would continue." She does not explain what "would continue" means or how retirees would have understood the word "continue" in any context other than "would continue for life." Similarly, Bayoff's affidavit states:

> Although Affiant does not currently have a clear independent recollection of every item discussed at the various meetings with ---BPP employees related to retirement, Affiant believes that she never told BPP employees that, upon their retirement, health care benefits for themselves and their spouses would be guaranteed for their lifetimes.

Plaintiffs respond that neither Bayoff's nor Napper's affidavit raises a question of material fact as neither affidavit refutes the 11 affidavits submitted by BPP retirees that they were, in fact, promised lifetime health care benefits. Both Bayoff and Napper admit that they cannot remember what they told retirees,

although they "believe" that they would not have said coverage was for life. In light of the 11 unequivocal affidavits submitted by retirees, the uncertain affidavits prepared by Napper and Bayoff appear extremely weak and nonresponsive to the facts alleged by plaintiffs.

STANDARD FOR SUMMARY JUDGMENT

Federal Rule of Civil Procedure 56(c) empowers the court to render summary judgment "forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." See F.D.I.C. v. Alexander, 78 F. 3d 1103, 1106 (6th Cir. 1996). The Supreme Court has affirmed the court's use of summary judgment as an integral part of the fair and efficient administration of justice. The procedure is not a disfavored procedural shortcut. Celotex Corp. v. Catrett, 477 U.S. 317, 327 (1986); see also Kutrom Corp. v. City of Center Line, 979 F.2d 1171, 1174 (6th Cir. 1992).

The standard for determining whether summary judgment is appropriate is "'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" Winningham v. North Am. Resources Corp., 42 F.3d 981, 984 (6th Cir. 1994) (citing Booker v. Brown & Williamson Tobacco Co., 879 F.2d 1304, 1310 (6th Cir. 1989)). The evidence and all inferences therefrom must be construed in the light most favorable to the non- moving party. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Enertech Elec., Inc. v. Mahoning County Comm'r, 85 F.3d 257, 259 (6th Cir. 1996); Wilson v. Stroh Co., Inc., 952 F.2d 942, 945 (6th Cir. 1992). [T]he mere

existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986); see also Hartleip v. McNeilab, Inc., 83 F.3d 767, 774 (6th Cir. 1996).

If the movant establishes-by use of the material specified in Rule 56(c) that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law, the opposing party must come forward with "specific facts showing that there is a genuine issue for trial." First Nat'l Bank v. Cities Serv. Co., 391 U.S. 253, 270 (1968); see also Adams v. Philip Morris, Inc., 67 F.3d 580, 583 (6th Cir. 1995). Mere allegations or denials in the non-movant's pleadings will not meet this burden. Anderson, 477 U.S. at 248. Further, the non-moving party cannot rest on its pleadings to avoid summary judgment. It must support its claim with some probative evidence. Kraft v. United States, 991 F.2d 292, 296 (6th Cir.), cert. denied, 510 U.S. 976 (1993).

ANALYSIS

The parties agree that the Sixth Circuit has held that in interpreting collectively bargained retiree health care benefits, where an ambiguity exists, there is an inference that retiree benefits are for life. Armistead v. Vernitron Corp., 944 F.2d 1287, 1294 (6th Cir. 1991); UAW v. Yard-Man, Inc., 716 F.2d 1476, 1479 (6th Cir. 1983), cert. denied, 465 U.S. 1007 (1984). The Sixth Circuit has explained that the inference arises because retiree benefits are "status" benefits which "carry with them an inference that they continue so long as the prerequisite status is maintained." Yard-Man, 714 F.2d at 1482. Another reason for the inference is that retiree benefits are only permissive, not mandatory, subjects of collective bargaining and thus, it is unlikely

that their continuation would be "left to the contingencies of future negotiations. Id. Because employees know that the union owes no duty to bargain for continued retiree benefits, employees are presumed to bargain for lifetime retiree benefits. Id. The inference, standing alone, however, is insufficient to support a finding of indeterminable benefits. Id. It must be supported by other evidence of intent. Id. In order to determine intent, a court must look to the express provisions of the agreement. If the specific provision of the plan at issue is ambiguous, then the court should first look to other provisions of the agreement and then, if necessary, to other extrinsic evidence of intent. Id. at 1480. In this case, the inference that retiree benefits are for life is supported by the language of the insurance agreements, the history of the parties' negotiations, and affidavits of union negotiators and retirees.

A. Express Contractual Language

The court first looks to the specific language of Section 9C of the 1988 Insurance Agreement which creates the health care coverage benefit for employees who retired after July 1, 1988. Section 9C provides:

> 9C. Employees Who Retire on or after July 11-1988
>
> Employees who retire on or after July 1, 1988 shall have paid-up life insurance in the amount of $3,500 and shall have the hospital-surgical-medical, vision, prescription drug, and hearing coverages (excluding dental) as set forth in Section 6 of this Insurance Agreement continued for themselves, their spouses, surviving spouses and eligible dependents.

Section 9C provides that health care coverage "will continue" for the employee, the employee's spouse, and eligible dependents. Defendants argue that because Section 9B which provides health care

benefits of employees who retiree between June 1, 1985, and June 30, 1988, specifically states that benefits continue "after retirement until their date of death," but Section 9C does not contain similar language, that Section 9C limited retiree health care coverage for the term of the CBA.

Plaintiffs, on the other hand, contend that Section 9C, on its face, promised employees retiring after July 1, 1988, lifetime health care coverage. In support of their argument, plaintiffs rely on the explicit language of the 1985 agreement which specifically promised retirees health benefits for life and the fact that those benefits were never renegotiated. Plaintiffs claim that in 1988, UAW Local 540 proposed that retiree health care benefits be continued for surviving spouses after the death of a retiree. The new language stated that employees who retire on or after July 1, 1988, "shall have [health benefits] . . . continued for themselves, their spouses, surviving spouses and dependents." Plaintiffs claim that Section 9C expanded retiree health care coverage to extend beyond the death of a retiree until the death of the surviving spouse or eligible dependants.

B. Sixth Circuit Precedent Supports Lifetime Benefit Interpretation

Plaintiffs correctly point out that since Yard-Man was decided, the Sixth Circuit has found that language almost identical to the contract language at issue here supported a finding that lifetime health care was intended. In Helwig v. Kelsey-Hayes, 93 F.3d 243 (6th Cir. 1996), cert. denied, 117 S.Ct. 690 (1997), the Sixth Circuit upheld a preliminary injunction finding that plaintiffs were likely to prevail on their claim for lifetime retiree health care. In Helwig, the relevant language in summary plan descriptions (SPDs), had two provisions, one applicable to all employees who

retired, the other to employees who retired at age 65 or older:

> When you are retired, your Health Care coverages, except for vision, are continued without cost to you.
>
> If you terminate employment with Kelsey-Hayes at age 65 or older for any reason other than discharge, all of your Health Care Coverage, except vision care, will be continued for the rest of your life without cost to you.

Id. at 248. Based on this language, and despite the fact that one group was promised health care for the rest of their lives while the other was promised that their health care benefits would be "continued," the Sixth Circuit held that the SPDs made clear, unambiguous promises of lifetime coverage. Id. at 251.

Similarly, in this case, Section 9C promised employees retiring after July 1, 1988, that after retirement their health care coverage would be "continued for themselves, their spouses, surviving spouses and eligible dependents." Like the provisions in the SPDs at issue in Helwig, the promise made in Section 9C promised retirees health care coverage for life. In addition, plaintiffs have submitted a copy of a memorandum which some employees considering retirement received which states:

> **Health Insurance**
>
> Hospital/Medical/Surgical, Vision, Prescription Drug, and Hearing (excluding Dental) continue for you, your spouse and any eligible dependents.
>
> When you die, your surviving spouse and eligible dependents shall have the same coverage as above continued at Company expense.

Also, defendant BPP's own witness, Bayoff, admits that those contemplating retirement between July 1, 1991, and January 1, 1993, were given a handout entitled "Summary of Retiree Benefits." That summary states, "Hospital-Medical-Surgical, vision, hearing and prescription drug coverage remain the same for you and your dependents." These memorandums, prepared by BPP to summarize the 1988 Insurance Agreement for retirees, also led post-July 1, 1988 retirees to believe that their medical benefits would continue for life.

Defendant BPP argues that the general durational clause of the CBA requires that retiree life insurance and health care benefits end with the expiration of the CBA. Defendant relies on Section 1A of the CBA which provides:

> These benefits will be provided at no cost to the Employees or retirees for the term of this Agreement except where the Plan specifically provides otherwise.

Plaintiffs argue that Section 1A does not limit retiree health care or life insurance benefits to the term of the CBA because there is language to the contrary in the agreement. Plaintiffs rely on Section 9C of the 1988 Insurance Agreement which provides that life insurance and health benefits for retirees are "continued for themselves [retirees], their spouses, surviving spouses, and dependents. Plaintiffs respond that Section 1A should not be read to limit 9C because Section 9C specifically provides that health benefits for retirees are "continued for themselves [retirees], their spouses, surviving spouses, and dependents," which plaintiffs contend provides for lifetime benefits.

Moreover, plaintiffs respond that Section 1A is akin to a general durational clause which the Sixth Circuit has held does not limit the inference that retiree benefits last as long as the retiree lives. Yard-

Man, 716 F.2d at 1482-83. Plaintiffs further argue that in order to overcome the inference that retiree benefits are for life, a clause limiting the duration of benefits must be specific to the particular benefit at issue. Golden v. Kelsey-Hayes, 845 F. Supp. 410, 414 (E.D. Mich. 1994), aff'd, 73 F.3d 648 (6th Cir. 1996), cert. denied, 117 S.Ct. 49 (1996). Defendant BPP argues that on appeal in Golden, the Sixth Circuit held that durational provisions of CBAs do not need to be specific to overcome the inference of Yard-Man. Defendant BPP relies on language from the Sixth Circuit's opinion in Golden lifted out of context to make its point and cites to the Sixth Circuit's statement that Yard-Man does not "require specific anti-vesting language before a court can find that the parties did not intend benefits to vest." Golden, 73 F.3d at 655. The Golden court's cautionary statement that the Yard-Man inference that retiree benefits are for life is not so strong as to require specific anti-vesting language where the CBA provision providing retiree benefits is unambiguous, is inapplicable in this case where plaintiffs are not relying solely on the inference but on the express contractual language which states that health benefits for retirees are "continued for themselves [retirees], their spouses, surviving spouses, and dependents." Defendant BPP has overstated the Sixth Circuit's opinion in Golden wherein the Sixth Circuit merely stressed that the "Yard-Man inference, and the other teachings of the opinion regarding contract interpretation and the consideration of extrinsic evidence, simply guide courts faced with the task of discerning the intent of the parties from vague or ambiguous CBAs." Golden, 73 F.3d at 656.

Where defendant BPP urges the court to apply Section 1A as a limitation on Section 9C, defendant is tacitly admitting to an ambiguity in Section 9C, else

there would be no need for the court to examine other provisions of the CBA in order to interpret Section 9C, the provision in dispute If the court accepts defendant's position that Section 9C is in fact ambiguous and must be interpreted in light of Section 1A, then there is no question that the Yard-Man inference that retiree benefits are lifetime benefits applies, as well as the rule established in Yard-Man that general durational provisions are insufficient to overcome the inference.

C. Yard-Man Requires Rejection of Interpretation that Renders Provision Illusory

Under defendant BPP's interpretation of the agreement, the promise for retiree health benefits and survivors benefits is illusory. Defendant alleges that the agreement only covered surviving spouses if a retiree died during the three year term of the collective bargaining agreement. As plaintiffs correctly point out, few if any retirees would be expected to die during the three year term of the 1988-1991 collective bargaining agreement, thus making the surviving spouse benefits meaningless.

D. Extrinsic Evidence Supports Lifetime Benefit Interpretation

Although there does not appear to be any need to look beyond the express language of the insurance agreements to conclude that retiree life insurance and health care benefits were covered for life, the extrinsic evidence presented further buttresses this conclusion. The affidavits of three union negotiators confirm that the parties intended that life insurance and health care coverage for retirees last for retirees, lifetimes and continue for surviving spouses and eligible dependents. The affidavits of the union negotiators stating that BPP negotiators never suggested or proposed that lifetime health care coverage for retirees be terminated stands unrefuted. The affidavits of

Napper and Bayoff, which were submitted by BPP, merely contain irrelevant legal conclusions about what they think the 1988 Insurance Agreement means. Their affidavits do not address any actual communications between the parties and do not establish any expressed intent on the part of BPP that retiree health care benefits be limited for those retiring after July 1, 1988. Moreover, the unequivocal affidavits of 11 retirees show that the company representatives assured them before they decided to retire that the company would provide them with health coverage for life. Defendants have failed to produce any proofs to the contrary. Napper's and Bayoff's affidavits admit that they do not remember what they told retirees, though they claim that they "believe" that they did not tell retirees that their benefits were for life. These uncertain equivocating affidavits are insufficient to raise a genuine issue of material fact in light of the overwhelming evidence which plaintiffs have presented in support of their claim for lifetime health care benefits.

CONCLUSION

For the reasons stated above, plaintiffs, partial motion for summary judgment as to liability on Count I only, against defendant BPP only, hereby is GRANTED.

SO ORDERED.

s/_____
BARBARA K. HACKETT
United States District Judge

Dated: September 29, 1997.

192000.2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UAW Local 540, Richard Pollard, et al., Plaintiffs,
Case No. 97-CV-6015 I -AA
Case No. 97-CV-6021 O-AA

v.

Honorable Barbara K. Hackett

Lloyd J. Baretz, et al., Defendants.

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FINAL JUDGMENT GRANTING IN PART PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT AGAINST DEFENDANTS UNITRON, INC. AND BEAVER PRECISION PRODUCTS, INC. WITH RESPECT TO RETIREE INSURANCE CLAIMS

At a session of said Court, held at the U.S. Courthouse in Ann Arbor, Michigan on December 4, 1998.

PRESENT: Hon. BARBARA K. HACKETT
District Court Judge

This Court has reviewed the relevant pleadings and heard oral argument with respect to Plaintiffs' Motion for Summary Judgment Against Defendant Unitron on Retiree Insurance Claims, and Plaintiffs' Motion for Summary Judgment Against Defendant BPP as to Remedy on Retiree Insurance Claim and for Permanent Injunctive Relief. The Court has determined that final injunctive relief is appropriate because Plaintiffs have prevailed on the merits of their retiree insurance claims, retirees and their spouses are likely to suffer irreparable harm unless their retiree insurance is reinstated, and the public interest favors providing retirees with the retiree benefit coverage Defendants are contractually obligated to provide. This Judgment is granted under Section 502 of the Employee Retirement Income Security Act, and under Section 301 of the Labor Management Relations Act.

IT IS THEREFORE ORDERED:

1) Defendant BVR Liquidating, Inc., a\k\a Beaver Precision Products, Inc. ("BPP") is ordered by mandatory permanent injunction to immediately take all action necessary to obtain or reinstate the medical and life insurance coverage (including hospital-surgical-medical, vision, prescription drugs, and hearing) provided for in Section 9 of the 1994-1997 Insurance Agreement between BPP and Local 540 of the United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW') for the lifetime of retirees who retired after May 31, 1994, and the lifetime of the spouses of those retirees. The Preliminary Injunction entered by this Court on June 5, 1997 in this action shall be lifted as necessary to provide those benefits, but shall otherwise remain in effect. Entry of this Judgment shall not affect in any way Plaintiffs' right to seek a supplemental judgment requiring BPP to provide medical and fife insurance coverage with respect to individuals who retired during periods on or prior to May 31, 1994 in the event that

Unitron, Incorporated ("Unitron") does not provide the coverage ordered in paragraph 2) of this Order, or in the event that any coverage currently provided with respect to individuals who retired on or prior to May 31, 1994 by other entities is terminated.

2) Defendant Unitron is ordered by mandatory permanent injunction to immediately take all action necessary to obtain or reinstate the medical and life insurance coverage (including hospital-surgical-medical, vision, prescription drugs, and hearing) provided for the Section 9 of the 1991-1994 Insurance Agreement between BPP and the UAW for the lifetime of retirees who retired on or after March 31, 1991 and prior to June 1, 1994, and the lifetime of the spouses of those retirees. The Preliminary Injunction entered by this Court on June 5, 1997 in this action shall be lifted as necessary to provide those benefits, but shall otherwise remain in effect. Entry of this Judgment shall not affect in any way Plaintiffs' right to seek a supplemental judgment requiring Unitron to provide medical and life insurance coverage with respect to individuals who retired during periods on or prior to March 31, 1991 in the event that any coverage currently provided individuals who retired on or. prior to March 31, 1991 by other entities is terminated.

3) This Judgment is certified as a final judgment under Federal Rule of Civil Procedure 54(b), this Court having determined that there is no just reason to delay entry of this judgment due to the desirability of reinstating medical benefits and life insurance coverage for retirees and their spouses.

4) BPP's and Unitron's oral motion made in open court on November 5, 1998, to stay enforcement of this Judgment pending appeal, with or without a supersedeas bond, is denied.

5) All claims for attorneys fees and costs in this action, including attorneys fees and costs with

respect to the retiree claims resolved by this Judgment, may be brought after entry of the judgment which resolves all remaining claims in this action.

Dated: December 4, 1998

s/ Barbara K. Hackett
District Court Judge

191999.2

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§2101. Supreme Court time for appeal or certiorari; docketing; stay

(a) A direct appeal to the Supreme Court from any decision under section 1253 of this title, holding unconstitutional in whole or in part, any Act of Congress, shall be taken within thirty days after the entry of the interlocutory or final order, judgment or decree. The record shall be made up and the case docketed within sixty days form the time such appeal is taken under rules prescribed by the Supreme Court.

(b) Any other direct appeal to the Supreme Court which is authorized by law, from a decision of a district court in any civil action suit or proceeding, shall be taken within thirty days from the judgment, order or decree, appealed from, if interlocutory, and within sixty days if final.

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

(d) The time for appeal or application for a writ of certiorari to review the judgment of a

State Court in a criminal case shall be as prescribed by the rules of the Supreme Court.

(e) An application to the Supreme Court for a writ of certiorari to review a case before judgment has been rendered in the court of appeals may be made at any time before judgment.

(f) In any case in which the final judgment or decree of any court is subject to review by the Supreme Court on writ of certiorari, the execution and enforcement of such judgment or decree may be stayed for a reasonable time to enable the party aggrieved to obtain a writ of certiorari from the Supreme Court. The stay may be granted by a judge of the court rendering the judgment or decree or by a justice of the Supreme Court, and may be conditioned on the giving of security, approved by such judge or justice, that if the aggrieved party fails to make application for such writ within the period allotted thereof, or fails to obtain an order plea good in the Supreme Court, he shall answer for all damages and costs which the other party may sustain by reason of the stay.

(g) The time for application for a writ of certiorari to review a decision of the United States Court of Appeals for the Armed Forces shall be as prescribed by the rules of the Supreme Court.

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§1254. Court of appeals; certiorari; certified question

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

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§1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

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(2)

Supreme Court, U.S.
FILED
MAR 13 2000
CLERK

No. 99-1348

IN THE
Supreme Court of the United States

BVR LIQUIDATING, INCORPORATED, formerly known as BEAVER PRECISION PRODUCTS, INC.; and UNITRON, INC.,
Petitioners,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND ITS LOCAL UNION NO. 540; RICHARD POLLARD; RONALD MANKE; THOMAS ELDON; and ALLEN LAWRENCE,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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19pp

COUNTERSTATEMENT OF QUESTIONS PRESENTED

Whether the Sixth Circuit correctly determined that the 1988 collective bargaining agreement between the parties did not terminate vested retiree health care benefits.

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IN THE

Supreme Court of the United States

No. 99-1348

BVR LIQUIDATING, INCORPORATED, formerly known as BEAVER PRECISION PRODUCTS, INC.; and UNITRON, INC.,

Petitioners,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND ITS LOCAL UNION NO. 540; RICHARD POLLARD; RONALD MANKE; THOMAS ELDON; and ALLEN LAWRENCE,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

COUNTERSTATEMENT OF THE FACTS

Prior to 1988 the company and the UAW [1] agreed in collective bargaining to vested, lifetime retiree health care

[1] Petitioners Unitron, Inc. and BVR Liquidating, Incorporated will be referred to collectively as "the company" in this Brief. Respondent International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its affiliated Local Union 540 will be referred to collectively as "the UAW".

benefits. The company concedes this. (Apdx. A4, Apdx. E2-3)[2] The pre-1988 collective bargaining agreement between the parties states that:

> **9B. Employees Who Retire On or After June 1, 1985**
>
> Employees who retire on or after June 1, 1985 shall have paid-up life insurance in the amount of $2,500 and shall have the hospital-surgical-medical (excluding hearing and vision) and prescription drug coverages set forth in Section 6 of this Insurance Agreement *continued after retirement until their date of death.* All other group insurance shall be terminated as of the date of retirement.

(Joint Appendix, page 436, emphasis added)

Because of the "until . . . death" language, those vested benefits, as originally negotiated, ended when a retiree died. Surviving spouses and dependents received no benefits. (Apdx. A4) During 1988 negotiations, the UAW proposed that these vested retiree health care benefits be expanded to continue after a retiree's death for the retiree's surviving spouse and dependents. The company agreed. (Apdx. E3, 6-13, 21-22) The company then revised the contractual language to effectuate that agreement. The new language stated that employees who retired after July 1, 1988 shall have paid up medical benefits ". . . continued for themselves, their spouses, surviving spouses, and eligible dependents." (Apdx. A5, footnote 5, Section 9C) The previous "until . . . death" language, which limited benefits to the lifetime of the retiree, was replaced to make clear that benefits continued

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[2] References to the Petition for Certiorari will be in the form Pet. Brief —; references to the Appendices to the Petition for Certiorari will be in the form Apdx. —; references to the Joint Appendix before the Sixth Circuit will be in the form Joint Appendix —.

for the surviving spouse of employees who retired after July 1, 1988. (Apdx. A4-5, footnote 5, Section 9C)

Nine years later, the company abruptly shut down and terminated all its UAW-represented employees. (Apdx. A5) At that time, for the first time, the company began claiming that the parties had agreed during 1988 negotiations to terminate the vested retiree health care. The company's claim, which it continues to press before this Court, is this: the language the company drafted in 1988 to effectuate the negotiated agreement to *expand* retiree health care to surviving spouses was actually intended by the parties to *terminate* vested retiree health care. As the Sixth Circuit and the District Court found, this is simply not true. The company never proposed ending the vested lifetime retiree health care benefits during 1988 negotiations. There was no discussion of termination of vested benefits. (Apdx. A14-15, Apdx. E6-14, E21-22) Indeed, the company's last offer in negotiations stated that the 1988 improvements in retiree health care benefits would be "in addition to benefits they are already receiving." (Apdx. E3)

REASONS FOR DENYING THE WRIT

Nothing about this case is worthy of review by this Court. The task performed by the court below involved nothing more than a garden-variety exercise in contract interpretation.

This dispute centers on the meaning of a 1988 change in contract language. The company claims that the 1988 language was intended to sharply diminish the company's future obligations with respect to retirees. The retirees argue that the 1988 language was intended to expand eligibility to include surviving spouses and dependents, but to leave the durational commitment otherwise un-

changed. The district court and the Sixth Circuit each examined the evidence offered by the parties and—applying traditional tools of contract construction—unanimously concluded that the contract interpretation offered by the retirees was the correct one.

By definition, cases presenting questions of contract interpretation are fact specific. As the Sixth Circuit's decision shows, interpreting contract language is an exercise in details. The tools for approaching that task are nothing more complex or controversial than hornbook principles of contract construction. No overarching theory dictates the results of these cases. Instead, each case must be examined based on the details of its own particular language and history. Petitioners' dissatisfaction with the results of that exercise in this case is no basis for review by this Court.

Not surprisingly, this Court has declined invitations to review retiree health care contractual disputes at least ten times.[3]

As we show in Part I, Petitioners are entirely incorrect in claiming that the Sixth Circuit has parted company with

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[3] See: *Gable v. Sweetheart Cup Co., Inc.*, 35 F.3d 851 (4th Cir. 1994), *cert. denied*, 514 U.S. 1057 (1995); *Golden v. Kelsey-Hayes*, 73 F.3d 648 (6th Cir. 1996), *cert. denied*, 619 U.S. 807 (1996); *Helwig v. Kelsey-Hayes*, 93 F.3d 243 (6th Cir. 1996), *cert. denied*, 519 U.S. 1059 (1997); *Sengpiel v. B. F. Goodrich Co.*, 156 F.3d 660 (6th Cir. 1998), *cert. denied*, 119 S.Ct. 1249 (1999); 143 L. Ed. 2d 347 (1999); *Sprague v. GM*, 133 F.3d 388 (6th Cir. 1998), *cert. denied*, 524 U.S. 923 (1998); *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir. 1993), *cert. denied*, 510 U.S. 909 (1993); *Merk v. Jewel Companies, Inc.*, 848 F.2d 761 (7th Cir. 1988), *cert. denied*, 488 U.S. 956 (1988); *Jensen v. Sipco, Inc.*, 38 F.3d 945 (8th Cir. 1994), *cert. denied*, 514 U.S. 1050 (1994); *John Merrell & Co. v. United Food and Commercial Unions*, 37 F.3d 1302 (8th Cir. 1994), *cert. denied*, 515 U.S. 1105 (1995).

its sister circuits by endorsing an outcome-determinative rule of contract construction in favor of retirees. The Sixth Circuit, like every other circuit to consider these cases, applied standard tools of contract interpretation to examine the details of the contract language and history in the cases presented to it in order to resolve the competing claims of the contracting parties.

As we show in Part II, Petitioners are also incorrect in claiming that there is disagreement among the circuits on the nature of the task to be performed when courts are presented with varying interpretations of collectively-bargained promises of post-retirement medical benefits. Rather, all of the courts to review these cases have utilized traditional tools of contract interpretation.

I. THE SIXTH CIRCUIT CORRECTLY APPLIED TRADITIONAL TOOLS OF CONTRACT CONSTRUCTION

The company concedes that it agreed in collective bargaining to vested, lifetime retiree health care. (Apdx. A4, E2-3) It claims, however, that the parties agreed in 1988 to terminate those vested benefits. These unusual facts make this case unique. In every other case cited by the company, the issue presented was whether an employer had ever taken the significant step of committing to pay lifetime retiree health care in the first place. The issue here is quite different: whether the union agreed in 1988 to the equally momentous step of *terminating* lifetime retiree health care.

The Sixth Circuit's decision was based on uncontradicted and overwhelming evidence, both contractual and extrinsic, that the parties did not intend to terminate vested retiree health care rights in 1988. The Sixth Circuit examined the relevant contractual provisions at

length, noting that Section 9 of the applicable insurance Agreements unambiguously provided for vested retiree health care benefits for pre- and post-1988 retirees. Because a general durational [4] term set forth elsewhere in the Insurance Agreement cast some uncertainty over the Section 9 vesting language, however, the Sixth Circuit found the contract as a whole to be ambiguous. (Apdx. A12-13) The Sixth Circuit therefore turned to extrinsic evidence:

> Although the language of Section 9C of the CBA appears unambiguous, it becomes ambiguous when read in light of Section 1A. Applying principles of contract interpretation, it is appropriate to consider extrinsic evidence to discern the intent of the parties when the contract language is ambiguous.

(Apdx. A15)

Consideration of the available extrinsic evidence quickly disposed of the company's claim that the parties intended to terminate the vested retiree health care benefits in 1988. As noted above in the Counterstatement of facts, there is no dispute that, prior to 1988, the company had agreed to vested benefits. In bargaining in 1988, there was no proposal to end vested benefits, no discussion of such a drastic step, and not the slightest hint that the parties intended to terminate the vested benefits. (Apdx. A13, 15; Apdx. E6-14, and E21-22) Most tellingly, even the company's written final proposal during

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[4] The company mischaracterizes the general durational clause in paragraph 1A of the Insurance Agreement. The company implies that the provision applied only to "retiree benefits". (Pet. Brief, p. 6.) In fact, Section 1A applied generally to the entire Insurance Agreement, which primarily provided benefits for active employees, not retirees. (Jt. Appendix 444-494) Section 9 of the Insurance Agreement sets forth the vesting language which specifically excepts retiree insurance benefits from the general duration clause.

1988 bargaining stated that the negotiated 1988 improvements in retiree health care benefits would be "in addition to benefits they are already receiving." [5] (Apdx. E3)

Based on these compelling factual findings, both the district court and the Sixth Circuit reached the same conclusion: the parties in 1988 did not intend to terminate post-retirement medical benefits.

The company quarrels with the Sixth Circuit's use of extrinsic evidence to determine the intent of the parties. The rule that courts may resort to extrinsic evidence when faced with an ambiguous contract is a commonplace of contract construction. The courts have routinely applied this rule in the context of collectively-bargained promises of post-retirement medical benefits. Because of the fact-dependent nature of these cases, courts have almost always found it necessary to examine extrinsic evidence to determine whether the parties to collective bargaining agreements intended to establish vested benefits.[6] In rare cases the courts have found that written language unambiguously promises retirees vested health care [7], or clearly

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[5] The Sixth Circuit observed after examining these facts that it was unlikely that parties intended to make a dramatic change in the existing collective bargaining agreement without even a mention of such a change during bargaining. (Apdx. A13) Contrary to Petitioners' assertions, such a common sense observation is neither new nor controversial. See, e.g., *Armistead v. Vernitron Corp.*, 944 F.2d 1287, 1296 (6th Cir. 1991).

[6] See, for example, *Keffer v. H.K. Porter Company, Inc.*, 872 F.2d 60, 64 (4th Cir. 1989); *International Association of Machinists v. Masonite Corporation*, 122 F.3d 228, 233 (5th Cir. 1997); *United Paperworkers v. Champion International Corporation*, 908 F.2d 1252, 1261 (5th Cir. 1990); *Smith v. ABS Industries*, 890 F.2d 841, 846 (6th Cir. 1989); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 609-610 (7th Cir. 1993); *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512, 1518 (8th Cir. 1988), *cert. denied sub nom., Anderson v. Slattery Group, Inc.*, 489 U.S. 1051 (1989).

[7] See *United Steelworkers of America v. Connors Steel*, 855 F.2d 1499, 1504 (11th Cir. 1988).

does not.[8] There is simply no disagreement on the application of this fundamental principle.

The company attempts to dress up its complaint about the use of extrinsic evidence as an attack on an "inference" articulated seventeen years ago by the Sixth Circuits as a factor in deciding retiree health care cases. *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984). That inference, however, played no role in the determination that the contract in this case was ambiguous, or in the court's examination of extrinsic evidence to resolve that ambiguity.[9]

The inference in question has not been outcome determinative in this or any other case.[10] As the decision

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[8] See *International Union, UAW v. Skinner Engine Co.*, 188 F.3d 130, 135 (3d Cir. 1999).

[9] The company claims that the Sixth Circuit's finding of ambiguity in this case was somehow the product of an "inference" articulated in the earlier Sixth Circuit decision in *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984). (Pet. Brief, p. 4) That is simply not true. Pages 11-12 of the Sixth Circuit's decision set forth a careful examnation of the written contract terms. (Apdx. A11-12) As that analysis makes clear, the Sixth Circuit found the contract ambiguous by reading the written contract, not by applying any inference. The only mention of *Yard-Man* in that analysis is this: "Although the language of Section 9C is unambiguous, *Yard-Man* requires us to read each provision in light of the agreement as a whole." Thus, the *Yard-Man* guideline of which the company complains is a commonplace rule of construction: that a contract's terms should be read together and, if possible, harmonized. The Sixth Circuit resolved the ambiguous contract by reviewing bargaining history which showed unequivocally that the parties did not intend to abolish vested retiree health care in 1988.

[10] The Sixth Circuit described the *Yard-Man* rules of contract construction, including the *Yard-Man* inference, at the start of its decision. (Apdx. A8-9) That recitation—that the courts should first look to the four corners of a contract, examine extrinsic evi-

below makes plain, the "inference" is nothing more than the observation that retirees have no bargaining rights after they retire, and it is therefore unlikely, absent other factors, that retiree health care benefits, "which are typically understood as a form of delayed compensation . . . would be left to the contingencies of future negotiations." *UAW v. Yard-Man*, 716 F.2d 1476, 1482.

The court below—echoing prior Sixth Circuit decisions—noted the extremely limited effect of this factor:

> *Yard-Man* does not shift the burden of proof to the employer, nor does it require specific anti-vesting language before a court can find that the parties did not intend benefits to vest. Rather, the *Yard-Man* inference, and the other teachings of the opinion regarding contract interpretation and the consideration of extrinsic evidence, simply guide courts faced with the task of discerning the intent of the parties from vague or ambiguous CBA's.

(Apdx. A9, quoting from *Golden v. Kelsey Hayes*, 73 F.3d 648, 656 (6th Cir. 1996), *cert. denied*, 519 U.S. 807 (1996))

Thus, contrary to the arguments advanced by Petitioners, *Yard-Man* does not create an outcome-determinative rule favoring vesting of retiree medical benefits. To the contrary, the *Yard-Man* analysis merely requires that courts faced with the task of interpreting "vague or ambiguous" collective bargaining agreements consider the context in which those agreements arise. The consideration thus mandated does not dictate outcome; it merely assures that all relevant evidence of intent will be considered.

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dence if the contract language is ambiguous, and consider the context where a contract is collectively bargained—is now boilerplate.

In fact, there is not a single case in the Sixth Circuit or elsewhere in which the application *vel non* of the "inference" was dispositive. Instead, the outcome of these cases depends on a detailed examination of the contract language and, if necessary to resolve contractual ambiguity, on other evidence bearing on the intent of the contracting parties.

No overarching rule of contract construction resolves these fact-dependent cases, and none can. For that reason, it is not surprising that this Court has denied certiorari in ten cases presenting these kinds of contractual disputes regarding the duration of retiree health care promises.[11]

II. THERE IS NO SPLIT IN THE CIRCUITS

Petitioners argue strenuously that the Circuits have adopted different approaches in deciding retiree health cases, pointing out that employers have prevailed in some retiree insurance disputes while retirees have prevailed in others. But that lack of unanimity of result reflects nothing more than the variety of contractual provisions and factual circumstances addressed by the courts below. No two of these cases are alike. The variation in outcome results from the different facts of each case, and not from any difference in the rules of contractual interpretation.

The Sixth Circuit's formulation of contractual interpretation principles has not resulted in decisions that vary in any way with other Circuits. The core rules of interpretation which have been unanimously endorsed by the Circuits are pure hornbook law: 1) welfare benefits do not automatically vest; [12] 2) the parties to a collective bar-

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[11] See cases cited at footnote 8 above.

[12] See *Helwig v. Kelsey Hayes*, 93 F.3d 243, 248 (6th Cir. 1996), *cert. denied*, 519 U.S. 1059 (1997); *UAW v. Skinner Engine Co.*, 188 F.3d 130, 137 (3d Cir. 1999); *Machinists v. Masonite Corporation*, 122 F.3d 228, 231 (5th Cir. 1997); *Bidlack v. Wheelabrator*

gaining agreement may nevertheless agree to vest retiree health care benefits;[13] and 3) extrinsic evidence may be considered if a contract is ambiguous on the question of whether parties intended retiree benefits to vest.[14] Each of the Circuits has applied these rules to widely varying factual situations. All have reached results consistent with their sister Circuits.[15]

The Circuit cases the company claims to be in conflict would have been decided exactly the same by the Sixth Circuit. The company argues that four circuits—the Seventh, Fifth, Eighth, and Third—have rendered decisions in conflict with the Sixth Circuit. The company is incorrect in each case.

Bidlack v. Wheelabrator Corp., 993 F.2d 603 (7th Cir. 1993), *cert. denied*, 510 U.S. 909 (1993), is the poster

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Corp., 993 F.2d 603, 604-605 (7th Cir. 1993); and *Anderson v. Alpha Portland Industries, Inc.*, 838 F.2d 1512, 1516 (1987).

[13] See *UAW v. Yard-Man*, 716 F.2d 1476, 1479; *UAW v. Skinner Engine Co.*, 188 F.3d 130, 138; *Machinists v. Masonite Corporation*, 122 F.3d 228, 231; *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 607; *Anderson v. Alpha Portland*, 836 F.2d 1512, 1516.

[14] See *UAW v. BVR Liquidating* (Apdx. A2, 12); *UAW v. Skinner*, 188 F.3d 130, 138; *Machinists v. Masonite Corporation*, 122 F.3d 228, 233; *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 608-609; *Anderson v. Alpha Portland, Inc.*, 836 F.2d 1512, 1517.

[15] The company also asserts that the Sixth Circuit decision in this case is in conflict with other Sixth Circuit decisons, specifically *Sengpeil v. B. F. Goodrich Company*, 156 F.2d 660 (6th Cir. 1998) and *Sprague v. General Motors Corp.*, 133 F.3d 388 (6th Cir. 1998), *cert. denied*, 524 U.S. 923 (1998). A cursory review reveals the company's error. As the Sixth Circuit pointed out in this case, both *Sengpeil* and *Sprague* addressed unilaterally-promulgated employer health care plans which contained reservation of rights provisions unmistakably reserving to the employer the right to terminate retire health care. Neither *Sengpeil* nor *Sprague* mentions the portion of the *Yard-Man* decision applicable to collectively bargained contracts because neither *Sengpeil* nor *Sprague* involved a collective bargaining agreement. (Apdx. A10-11)

child for the company's argument regarding a split among the circuits. In Bidlack, the seventh Circuit examined a collectively bargained agreement which stated that the company would pay the cost of retirees' health insurance and that the insurance "shall be continued for the spouse after the death of the retiree." *Wheelabrator*, 606. The Seventh Circuit found this language to be ambiguous on the question of whether the parties intended to vest retiree health care rights, and remanded for consideration of extrinsic evidence of intent. That is exactly the approach taken by the Sixth Circuit in this case with respect to similar language. Petitioners are simply wrong in claiming that the Seventh Circuit rejected *Yard-Man*.

In *International Association of Machinists v. Masonite Corporation*, 122 F.3d 228 (5th Cir. 1997), the Fifth Circuit addressed collectively-bargained language which stated that retirees were entitled to certain medical benefits ". . . until the death of the retired employee." This language was set forth in an insurance agreement which stated that "its term is coincident with that of the [CBA]". *Masonite*, 232-233. The Fifth Circuit found this language ambiguous on the question of intent to vest, and remanded for consideration of extrinsic evidence. *Masonite*, 233. Again, this is exactly the approach taken by the Sixth Circuit in examining similar language.

The Eighth Circuit, in *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512 (8th Cir. 1987) examined collectively bargained retiree health care language which stated that the company would pay medical benefits "until the death of retiree". Extrinsic evidence demonstrated that the "until the death" language was specifically inserted after the union sought, and did not obtain, a bargaining agreement change to continue benefits for surviving spouses after a mid-contract retiree death. The court ruled that the "until the death" language was inserted only to

make clear that a surviving spouse did not continue to receive benefits in such a situation. *Anderson,* 1518. This bargaining history analysis underscores the fact-dependent nature of these cases.

Finally, in *UAW v. Skinner Engine Company,* 188 F.3d 130 (3d Cir. 1999), the Third Circuit focused on language which stated that the company "will continue to provide" medical coverage. *Skinner,* 135. There was no mention of retirees in that language. The Third Circuit therefore held that the language in question was unambiguous and did not provide for vested benefits. This analysis squares with the Sixth Circuit's decisions and those of every other Circuit. All Circuits have required language indicating a specific intent to continue health care benefits *for retirees* in order to find vested retiree benefits. Although the Third Circuit also stated in dicta that it disagreed with the *Yard-Man* inference, there is little doubt that the Sixth Circuit, faced with the same facts recited by the Third Circuit, would have reached the same result.

It is true, as Petitioners note, that some of these Circuits have balked at the use of the term "inference" in describing the tools used to interpret collectively bargained contracts. None of these Circuits, however, reject consideration of the contextual factors identified by the Sixth Circuit. Every Circuit addressing that question has noted the relevance of those factors. For example, in the Fifth Circuit case cited by Petitioners, *International Association of Machinists v. Masonite,* 122 F.3d 228 n.1 (5th Cir. 1997), the court stated:

> This court noted in [*United Paperworks v. Champion,* 908 F.2d 1252, 1261 (5th Cir. 1990)] that "the fact that retirees have no voice in negotiating a new collective bargaining agreement" may be con-

> sidered by the district court as "some evidence of intent" to vest retirement benefits. [citation omitted]

See also *Local Union No. 150-A, UFCW v. Dubuque Packing Co.*, 756 F.2d 66, 70 (8th Cir. 1985); and *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 609, 612 (7th Cir. 1993).

As the Circuit decisions show, these cases turn on the particular facts of each case, not on any one contractual interpretation principle. There is no substantive conflict between the Circuits.

CONCLUSION

For the reasons set forth above, the Petition should be denied.

Respectfully submitted,

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No. 99-1348

In The Supreme Court of the United States

BVR LIQUIDATING, INCORPORATED, formerly known as Beaver Precision Products, Inc.; UNITRON, INC.,
Petitioners.

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AND ITS LOCAL UNION NO. 540; RICHARD POLLARD; RONALD MANKE; THOMAS ELDON; ALLEN LAWRENCE,
Respondents,

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Sixth Circuit

REPLY TO BRIEF IN OPPOSITION

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1 app

QUESTION PRESENTED

Whether the *Yard-Man* inference/ presumption -- that retiree health care benefits vest for the lifetime of the retiree even when the terms of the benefits contract lack any clear, affirmative vesting language -- is contrary both to traditional principles of contract interpretation and to Congress' intent in specifically choosing not to provide for the vesting of employee welfare benefits under the Employee Retirement Income Security Act, 29 U.S.C. Sec. 1001, *et seq.*

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I. ERRORS IN THE UAW'S "COUNTERSTATEMENT OF THE FACTS"

The provision of the 1988 insurance agreement – Section 9C – which increased the benefits for post-July 1988 retirees and extended benefits to their spouses and dependents, but also eliminated the vesting "date of death" durational language. The Union's[1] "Counter-statement of the Facts," at Page 3 of its Brief in Opposition (hereinafter, the "Brief"), mischaracterizes that provision as "language the company drafted in 1988..." That language, however, was collectively bargained for by the parties, and the Union cites to nothing in the record that supports such a characterization.

The rest of that Counterstatement focuses its attention on extrinsic evidence: the Union's proposal, during the 1988 contract negotiations, that health care benefits be "expanded" to include spouses, surviving spouses and dependents (Brief, at Page 2);[2] and the Company's failure to

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[1] For convenience, Petitioner BVR Liquidating, Incorporated, f/k/a "Beaver Precision Products, Inc." shall be referred to as "BVR"; Petitioner Unitron, Inc. shall be referred to as "Unitron"; BVR and Unitron shall be collectively referred to as the "Company"; and all of the Respondents shall collectively be referred to as the "Union."

[2] Contrary to the Union's contention at Page 2 of its Brief, the Company never "agreed" to the vesting of those "expanded" benefits for the lifetimes of the retirees, their spouses, surviving spouses or dependents. As the Company has consistently argued, the omission of the express "date of death" language from the expanded benefit provision for

propose ending vested lifetime benefits during the 1988 negotiations. (Brief, at Page 3).

As discussed below, such a focus on extrinsic matters instead of on the contract language itself is the impermissible result of the Sixth Circuit's application of the *Yard-Man*[3] inference/ presumption to (in this case) create an ambiguity out of certain contract language that, if read as part of the whole contract without application of that inference/ presumption, unambiguously provided for non-vested benefits. By then using extrinsic evidence to resolve that artificial ambiguity of its own making, the court has created its own contract.

II. THE UNION'S REASONS FOR DENYING THE WRIT ARE SPECIOUS

The Union argues, in its "Reasons for Denying the Writ," that this is a "garden-variety" contract interpretation case (Brief, at Page 3) with "[n]o overarching theory" dictating its result (Brief, at Page 4); and one that has been decided merely by applying the "standard tools of contract interpretation." (Brief, at Page 5).

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post-July 1, 1988 retirees (Section 9C), when viewed in the light of the durational limitation of Section 1A of that contract, clearly expresses the parties' intention to make those expanded benefits non-vested and terminable upon the contract's expiration.

[3] *International Union v. Yard-Man*, 716 F.2d 1476 (6th Cir. 1983), *cert. denied*, 465 U.S. 1007 (1984)

That position is belied by the dominant role the *Yard-Man* inference/presumption – that parties to a collectively bargained agreement intend retiree welfare benefits to be vested – has played in Sixth Circuit decisions since 1983, and in its decision in this case.

It is further belied by the fact that four other circuit courts of appeals have seen fit to reject that kind of inference/presumption;[4] and that two of those courts have done so by referring to it by name.[5]

The contract language in this case presents this Court with the best opportunity to date for deciding that the *Yard-Man* inference/presumption is not, and should not become, a "standard tool of contract interpretation" as the Union advocates. By seizing this opportunity, this Court can end the years of disagreement among the circuits that has created a virtual minefield of inconsistent decisions and turned

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[4] The Third Circuit, in *International Union v. Skinner Engine Co.*, 188 F.3d 130 (3rd Cir. 1999); the Fifth Circuit, in *International Association of Machinists v. Masonite Corp.*, 122 F.3d 228 (5th Cir. 1997); the Seventh Circuit, in *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir.), *cert. denied*, 510 U.S. 909 (1993); and the Eighth Circuit, in *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512 (8th Cir. 1988), *cert. denied*, 489 U.S. 1051 (1989).

[5] The Third Circuit, in *International Union v. Skinner Engine Co.*; and the Eighth Circuit, in *Anderson v. Alpha Portland Industries, Inc.*

enforcement of collectively bargained employee welfare agreements into a jurisdictional lottery.

III. THE SIXTH CIRCUIT APPLIED THE *YARD-MAN* INFERENCE/PRESUMPTION TO IMPROPERLY CREATE A CONTRACT AMBIGUITY THAT IT COULD THEN RESOLVE WITH EXTRINSIC EVIDENCE

The pernicious nature of the *Yard-Man* inference/presumption is highlighted by the prominent role extrinsic evidence – and not the actual language of the applicable insurance contract – plays in Section I of the Union's Brief, in which the Union repeatedly asserts that the Sixth Circuit applied "traditional tools of contract construction" when it held that Section 9C of the contract unambiguously provided for vested retiree health care benefits.

Despite the Union's argument that the *Yard-Man* inference/presumption "played no role in the determination that the contract in this case was ambiguous, or in the [Sixth Circuit's] examination of extrinsic evidence to resolve that ambiguity" (Brief, at Page 8), it is obvious from even a cursory reading of the decision below that such is not the case.

After beginning its analysis of the contract language with a rote recitation of the generally accepted rules of contract interpretation, the Sixth Circuit launches into a discussion of retiree health care benefits as "status benefits" before concluding that

> [a]lthough the *Yard-Man* presumption is only an inference that the parties intended for benefits to vest, it is appropriate for the court to apply this presumption in this case.[6]

Apdx. A-10.

Only by first applying that inference/presumption was the Sixth Circuit able to interpret Section 9C language that is devoid of any durational term ("Employees who retire on or after July 1, 1988 shall have...the [various medical coverages] continued..."[7]) as unambiguously providing for vested lifetime retiree health care benefits.

Because the Sixth Circuit did not state that the Section 9C benefits were unambiguously vested until *after* its acknowledgment that the *Yard-Man* "presumption" was applicable, the *Yard-Man* "presumption" obviously dictated the court's threshold determination that the Section 9C language is unambiguous.

The determinative effect of the *Yard-Man* inference/presumption is also corroborated by the court's holding that the Section 9C language

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[6] The very fact that the Sixth Circuit is willing to use the terms "presumption" and "inference" interchangeably when referring to the central holding in *Yard-Man* further illustrates the susceptibility of that concept to inconsistent applications, if not outright misuse.

[7] Appendix, A-5, at note 5.

was comparable to language that it previously held as establishing vested benefits in *Helwig v. Kelsey-Hayes Co.*, 93 F.3d 243 (6th Cir. 1996).[8] Apdx. A-11 and A-12.

Although the *Helwig* court stated that *Yard-Man* was not applicable to the facts of that case, it expressly based its conclusion that certain operative welfare plan language providing that retiree health care benefits "are continued" without a specific duration demonstrated an intent to vest benefits, on its earlier decision of *Policy v. Powell Pressed Steel Company*, 770 F.2d 609 (6th Cir. 1985). *Policy*, however, is a decision permeated by the *Yard-Man* "inference that the pensioner's benefits continue for life, not for the remainder of the collective bargaining agreement." 770 F.2d at 614-15.

Had that court truly applied the traditional tools of contract interpretation instead of the *Yard-Man* inference/presumption, it would have been compelled to find that health care benefits for the post-1988 retirees and their families terminated upon the expiration of the last in the series of collective bargaining agreements containing those terms.[9]

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[8] *Helwig* was procedurally different from this case because it was an appeal from the district court's entry of a preliminary injunction. Accordingly, the applicable standard of review was the highly deferential abuse of discretion standard, not the *de novo* standard applicable to cases such as this one which have been decided on summary judgment.

IV. THE THIRD, FIFTH, SEVENTH AND EIGHTH CIRCUITS HAVE REJECTED THE *YARD-MAN* INFERENCE/ PRESUMPTION, THEREBY CREATING A CLEAR SPLIT AMONG THE CIRCUITS

The Union admits that certain other circuit courts of appeals "have balked at the use of the term 'inference' in describing the tools used to interpret collectively bargained contracts." (Brief, at Page 13). The Union, however, attempts to minimize that fact by noting that those circuits apply other rules of contract interpretation; and that the "lack of unanimity of result" is not the result of applying the *Yard-Man* inference/

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[9] The traditional contract interpretation factors would have required the court to consider (a) the lack of specific durational language in Section 9C (for post-1988 retirees) compared to the specific date-of-death language in Section 9B (for pre-1988 retirees); and (b) Section 9C's improved benefits for post-1988 retirees (including first-time benefits for family members) but limited to the contract's term, in comparison to Section 9B's inferior benefits for pre-1988 retirees only (not their families) but with lifetime duration. More importantly, however, it would have required that Section 9C's lack of specific durational language be viewed in the light of Section 1A's prohibition against benefits extending beyond the contract's term "except where the Plan specifically provides otherwise."

This last distinction is why the Company never contested the pre-July 1988 retirees continuing to receive their health care benefits while it has contested continued benefits for post-July 1988 retirees and their families.

presumption, but merely a function of "the different facts of each case, and not from any difference in the rules of contract interpretation." (Brief, at Page 10).

It borders on the absurd, however, to suggest that any legal inference or presumption, especially one that has been as prominent in employee benefit law as the *Yard-Man* inference/presumption has been for the past seventeen years, is not a significant factor in the interpretation of employee welfare benefits contracts by those circuits that utilize it.[10]

Such a suggestion is also belied by the Sixth Circuit's opinion below, in which *Yard-Man* and its inference/presumption is mentioned so prominently and repeatedly that it is clearly the only factor identified by that court in affirming the district court's finding that the benefit provision of Section 9C, standing alone, "was unambiguous and demonstrated the parties' intent to provide retirees and their dependents lifetime health care benefits." Apdx. A-12.

Finally, it is belied by the Courts of Appeals for the Third, Fifth, Seventh and Eighth Circuits rejecting it as a factor in contract interpretation. If the *Yard-Man* inference/presumption were irrelevant as a tool for contract interpretation, there would be no reason for the Third Circuit to disagree with it by name and suggest that it "may be contrary to Congress' intent in choosing specifically not to provide for

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[10] The First, Fourth, Sixth and Eleventh Circuits have all applied the *Yard-Man* inference/presumption.

the vesting of employee welfare benefits."[11] Nor would there be any reason for the Eighth Circuit to also disagree with it by name and refer to it as "illogical" and "gratuitous."[12]

While the *Yard-Man* inference/presumption may not have been the *sole* dispositive factor in any of the cases in which it has been applied, there can be no reasonable doubt that it was at least one of the dispositive factors; and in the present case, it was used to create an ambiguity and justify the consideration of extrinsic evidence. As such, it is able to influence the outcome of a case in ways unintended by the parties, and inconsistent with -- if not contrary to -- express contract language.

V. APPLICATION OF THE *YARD-MAN* INFERENCE/PRESUMPTION FRUSTRATES THE MEANING OF THE CONTRACT LANGUAGE

In arguing that the decisions of the Third, Fifth, Seventh and Eighth Circuits are somehow consistent with the Sixth Circuit's contractual analysis notwithstanding the Sixth Circuit's use of the *Yard-Man* inference/presumption, the Union ignores the fact that those courts' refusal to apply that inference/presumption was outcome determinative.

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[11] *International Union v. Skinner Engine Co.*, 188 F.3d at 140.

[12] *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d at 1517.

For example, had the *Yard-Man* inference/ presumption been applied to the contract ambiguities that caused the Fifth Circuit in *International Association of Machinists v. Masonite Corporation* and the Seventh Circuit in *Bidlack v. Wheelabrator Corp.* to remand those cases for consideration of extrinsic evidence of intent, those ambiguities would have been resolved in favor of vested benefits without the need for remand.

The Eighth Circuit, in *Anderson v. Alpha Portland Industries, Inc.*, affirmed the dismissal of a claim for vested retiree health care benefits by expressly refusing to apply the *Yard-Man* inference/presumption to override "specific durational clauses in the...agreements [that] show an intent to limit benefits to the duration of the agreement." 836 F.2d at 1519.

Echoing the reasoning of the Eighth Circuit in *Anderson*, the Third Circuit, in *International Union v. Skinner Engine Co.*, also refused to apply the *Yard-Man* inference/ presumption when determining that the contract phrases "will continue" and "shall remain" did not – especially in the light of other language in the contracts limiting the duration of benefits to the term of the contract – reflect an intent to vest those benefits for the lifetimes of the retirees. 188 F.3d at 141.

In each of those cases, therefore, the refusal to apply the *Yard-Man* inference/ presumption determined the outcome.

It is neither an oversight nor a coincidence, therefore, that the Union studiously ignores the duration of benefits limiting language in Section 1A of the contract. That language, if it had been considered with the Section 9C language and interpreted without the *Yard-Man* inference/ presumption, would have yielded the same result as in *Skinner Engine.*

By applying the *Yard-Man* inference/ presumption to find the Section 9C benefits language unambiguously vested, however, the Sixth Circuit was able to treat the durational limitation language of the Section 1A as an ambiguity causing, instead of and ambiguity resolving, provision. That having been done, that court was free to use one-sided extrinsic evidence to create the contract's rights and obligations as it saw fit.

CONCLUSION

The *Yard-Man* inference/presumption calls into question the meaning of each collectively-bargained retiree welfare benefits contract. The *Yard-Man* inference/presumption, therefore, jeopardizes the predictable and consistent interpretation of employee welfare benefit contracts. It should be eliminated; and, accordingly, *certiorari* should be granted.

Respectfully submitted,

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